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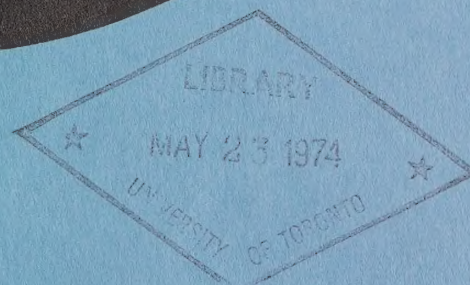
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Monthly Report



ONTARIO LABOUR RELATIONS BOARD

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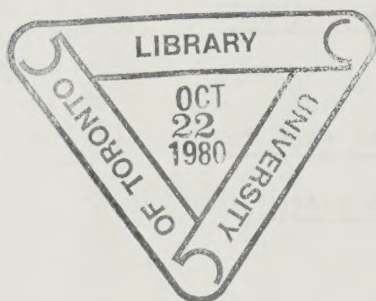
OLRB REPORTS

ONTARIO LABOUR RELATIONS BOARD REPORTS

A MONTHLY SERIES OF DECISIONS FROM THE

ONTARIO LABOUR RELATIONS BOARD

CITED [1974] OLRB REP.



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BEFORE: D. E. FRANKS, VICE-CHAIRMAN, AND BOARD MEMBERS H. J. F. ADE AND E. BOYER.

APPEARANCES AT THE HEARING: F. MANONI FOR THE APPLICANT; NO ONE FOR THE RESPONDENT; CLIVE THOMAS FOR THE INTERVENER.

DECISION OF THE BOARD: JANUARY 2, 1974.

1. THE NAME OF THE RESPONDENT EMPLOYER IN THE APPLICATION HEREIN WAS GIVEN AS "SIROTEK CONSTRUCTION". IN ITS REPLY THE RESPONDENT STATES THE CORRECT NAME OF THE RESPONDENT IS "F. B. SIROTEK LIMITED". AT THE HEARING IN THIS MATTER, THE APPLICANT AND THE INTERVENER AGREED THAT THE CORRECT NAME OF THE RESPONDENT HEREIN SHOULD BE GIVEN AS "F. B. SIROTEK LIMITED" AND, ACCORDINGLY, THE NAME OF THE RESPONDENT APPEARING IN THE STYLE OF CAUSE IS AMENDED TO READ "F. B. SIROTEK LIMITED".

2. THE INTERVENER FILED WITH ITS INTERVENTION A COLLECTIVE AGREEMENT BETWEEN SIROTEK CONTRACTORS LIMITED AND THE CANADIAN CONSTRUCTION WORKERS' UNION, DIVISION NO. 1, N.C.C.L. THE BOARD IN A DECISION DATED JULY 3, 1969, IN BOARD FILE 16321-69-R (RE PILLAR CONSTRUCTION LIMITED) NOTED THAT THE NAME CANADIAN CONSTRUCTION, BUILDING MAINTENANCE WORKERS' UNION (N.C.C.L.) WAS THE SAME ENTITY AS THE CANADIAN CONSTRUCTION WORKERS' UNION, DIVISION NO. 1, N.C.C.L., THE DIFFERENT NAME BEING MERELY A CHANGE OF NAME OF THAT TRADE UNION. THUS THE COLLECTIVE AGREEMENT FILED BY THE INTERVENER IS A COLLECTIVE AGREEMENT TO WHICH IT IS A PARTY. THE QUESTION ARISES, HOWEVER, AS TO THE EFFECT TO BE GIVEN THAT COLLECTIVE AGREEMENT SINCE THE EMPLOYER NAMED THEREIN IS SIROTEK CONTRACTORS LIMITED. IN ITS REPLY, THE RESPONDENT CLAIMS THAT F. B. SIROTEK WAS A PARTY TO OR WAS BOUND BY A COLLECTIVE AGREEMENT AND FILED THE SAME COLLECTIVE AGREEMENT AS THE INTERVENER. THE RESPONDENT ALSO MAKES THE FOLLOWING STATEMENT IN ITS REPLY:

"THE CONSTRUCTION OPERATIONS OVER THE LAST TWENTY YEARS HAVE BEEN PERFORMED BY THE SAME OWNERS IN THE NAME OF SIROTEK CONSTRUCTION LIMITED, SIROTEK CONTRACTORS LTD., AND F. B. SIROTEK LIMITED. PLEASE NOTE THAT SIROTEK CONTRACTORS LIMITED IS A SUBSIDIARY OF F. B. SIROTEK LIMITED.

"F. B. SIROTEK LIMITED IS THE SAME COMPANY AS SIROTEK CONSTRUCTION LIMITED, THE NAME ONLY HAS BEEN CHANGED AT THE REQUEST OF THE PROVINCIAL SECRETARY.

"THE ABOVE COMPANIES HAD NO LABOURERS ON STAFF
BETWEEN EARLY 1969 AND EARLY 1973."

IT IS CLEAR THAT THERE ARE TWO SEPARATE CORPORATE ENTITIES, F. B. SIROTEK LIMITED AND SIROTEK CONSTRUCTION LIMITED. IN VIEW OF THE FACT THAT THERE ARE TWO CORPORATE ENTITIES AND THAT THE COLLECTIVE AGREEMENT ON WHICH THE INTERVENER RELIES IS A DIFFERENT CORPORATE ENTITY FROM THE RESPONDENT IN THE PRESENT CASE, WE ARE NOT PREPARED TO FIND THAT THE COLLECTIVE AGREEMENT FILED BY THE RESPONDENT AND THE INTERVENER AFFECTS THE PRESENT APPLICATION OR GIVES THE INTERVENER ANY INTEREST IN THE PRESENT APPLICATION.

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5. THE BOARD FURTHER FINDS THAT ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA - CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN CONSTITUTE A UNIT OF THE EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

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7. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

4675-73-JD: CANADIAN JOHNS-MANVILLE COMPANY LIMITED (COMPLAINANT) v. LOCAL UNION 47, SHEET METAL WORKERS INTERNATIONAL ASSOCIATION AND THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 2041 (RESPONDENTS).

BEFORE: D. E. FRANKS, VICE-CHAIRMAN, AND BOARD MEMBERS H. J. F. ADE AND P. J. O'KEEFFE.

APPEARANCES AT THE HEARING: JAMES B. CHADWICK AND MITCH WATT FOR THE COMPLAINANT; RONALD S. TAYLOR, ROBERT L. BELLEVILLE AND RAY GUERTIN FOR THE RESPONDENT LOCAL UNION 47, SHEET METAL WORKERS INTERNATIONAL ASSOCIATION; AND ROBERT REID AND NOEL GUILBEAULT FOR THE RESPONDENT THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 2041.

DECISION OF THE BOARD:

JANUARY 2, 1974.

1. THIS IS A COMPLAINT UNDER SECTION 81 OF THE ACT IN WHICH THE COMPLAINANT HAS REQUESTED THE BOARD TO ASSIGN CERTAIN WORK IN DISPUTE TO THE RESPONDENT, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 2041, (HEREINAFTER REFERRED TO AS THE "CARPENTERS UNION"). THE COMPLAINT ARISES BECAUSE THE RESPONDENT LOCAL UNION 47, SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION (HEREINAFTER REFERRED TO AS THE "SHEET METAL WORKERS UNION") HAS REQUIRED THE ASSIGNMENT OF WORK TO ITS MEMBERS RATHER THAN MEMBERS OF THE CARPENTERS UNION. THE

WORK IN QUESTION HAS BEEN DESCRIBED BY THE COMPLAINANT AS "THE INSTALLATION OF RADIANT AND NON-RADIANT METAL PANS AND PADS (BY BURGESS-MANNING) ON THE OTTAWA CHILDREN'S HOSPITAL PROJECT, OTTAWA, ONTARIO".

2. THE RESPONDENT SHEET METAL WORKERS UNION FAILED TO FILE A REPLY. HOWEVER, AT THE HEARING OF THIS MATTER, THE RESPONDENT RAISED THE ISSUE OF THE BOARD'S JURISDICTION TO DEAL WITH THE PRESENT DISPUTE. THE SHEET METAL WORKERS UNION ARGUED THAT THE WORK IN QUESTION HAD RECENTLY BEEN AWARDED TO THE SHEET METAL WORKERS UNION BY A DECISION OF THE IMPARTIAL JURISDICTIONAL DISPUTES BOARD FOR THE CONSTRUCTION INDUSTRY. THE ARGUMENT RAISED BY THE SHEET METAL WORKERS UNION ARISES OUT OF THE PARTICIPATION BY THE PARENT UNION OF THE RESPONDENT CARPENTERS LOCAL IN THE PROCEEDINGS BEFORE THE IMPARTIAL JURISDICTIONAL DISPUTES BOARD. THE CONSEQUENCE OF SUCH PARTICIPATION IS THAT THE BOARD SHOULD IMPLY, AS PART OF THE COLLECTIVE AGREEMENT BETWEEN THE COMPLAINANT AND THE RESPONDENT CARPENTERS UNION, A PROVISION OF THE TYPE CONTEMPLATED BY SECTION 81(14) OF THE ACT. THAT PROVISION READS:

"THE BOARD SHALL NOT INQUIRE INTO A COMPLAINT MADE BY A TRADE UNION, COUNCIL OF TRADE UNIONS, EMPLOYER OR EMPLOYERS' ORGANIZATION THAT HAS ENTERED INTO A COLLECTIVE AGREEMENT THAT CONTAINS A PROVISION REQUIRING THE REFERENCE OF ANY DIFFERENCE BETWEEN THEM ARISING OUT OF WORK ASSIGNMENT TO A TRIBUNAL MUTUALLY SELECTED BY THEM WITH RESPECT TO ANY DIFFERENCE AS TO WORK ASSIGNMENT THAT CAN BE RESOLVED UNDER THE COLLECTIVE AGREEMENT, AND SUCH TRADE UNION, COUNCIL OF TRADE UNIONS, EMPLOYER OR EMPLOYERS' ORGANIZATION SHALL DO OR ABSTAIN FROM DOING ANYTHING REQUIRED OF IT BY THE DECISION OF SUCH TRIBUNAL."

IF SUCH A PROVISION WERE PART OF THE COLLECTIVE AGREEMENT, THIS BOARD WOULD BE WITHOUT JURISDICTION TO ENTERTAIN THE PRESENT COMPLAINT.

AFTER CONSIDERING THE REPRESENTATIONS BY THE PARTIES ON THIS MATTER, THE BOARD MADE THE FOLLOWING DECISION AT THE HEARING:

"NOTWITHSTANDING THE LATENESS OF THE TIME AT WHICH THE RESPONDENT SHEET METAL WORKERS UNION HAS RAISED A PROBLEM OF THE BOARD'S JURISDICTION, WE WILL DEAL WITH THE MATTER. IT IS CLEAR THAT THE COLLECTIVE AGREEMENT BETWEEN THE COMPLAINANT AND RESPONDENT CARPENTERS (TO WHICH THE WORK IN DISPUTE HAS BEEN ASSIGNED) DOES NOT CONTAIN ANY REFERENCE TO A TRIBUNAL OF THE TYPE CONTEMPLATED IN SECTION 81(14). WE ARE OF THE VIEW THAT SUCH A PROVISION WHICH EXCLUDES THE JURISDICTION OF THE BOARD TO ISSUE A REMEDY WHICH IT IS NORMALLY ENTITLED TO

ISSUE, OUGHT TO BE STRICTLY CONSTRUED AND CONSEQUENTLY CANNOT FIND MERIT IN MR. TAYLOR'S ARGUMENT THAT SUCH A TERM SHOULD BE IMPLIED BY THE CONDUCT OF THE PARENT UNION OF THE RESPONDENT CARPENTERS."

THE BOARD THEN PROCEEDED TO HEAR EVIDENCE AND ARGUMENT CONCERNING THE PROPER ASSIGNMENT OF THE WORK IN DISPUTE.

3. THE COMPLAINANT AND THE RESPONDENT CARPENTERS ARE BOUND BY A COLLECTIVE AGREEMENT DATED MARCH 14, 1972, BETWEEN THE ACOUSTICAL ASSOCIATION, ONTARIO AND THE ONTARIO PROVINCIAL COUNCIL OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA ON BEHALF OF ITS AFFILIATED LOCAL UNIONS. THE COMPLAINANT IS BOUND BY THAT AGREEMENT AS A MEMBER OF THE ASSOCIATION AND THE RESPONDENT CARPENTERS UNION IS BOUND BY THAT AGREEMENT BECAUSE OF ITS MEMBERSHIP IN THE PROVINCIAL COUNCIL. THIS AGREEMENT IS IN EFFECT FROM MARCH 14, 1972, TO APRIL 30, 1974. PRIOR TO THIS THE COMPLAINANT HAD BEEN PARTY TO A COLLECTIVE AGREEMENT WITH THE LOCAL OF THE CARPENTERS UNION WHICH IS THE RESPONDENT IN THE PRESENT CASE. ARTICLE 4 OF THAT AGREEMENT REFERS TO THE TRADE JURISDICTION OF THE CARPENTERS UNION BOUND BY THAT AGREEMENT. THE COMPLAINANT MADE THE PRESENT WORK ASSIGNMENT UNDER THE TERMS OF THAT ARTICLE.

4. THE COMPLAINANT CALLED A NUMBER OF WITNESSES INVOLVED IN THE INSTALLATION OF ACOUSTICAL CEILING WHO GAVE EVIDENCE CONCERNING THE PRACTICE IN THE OTTAWA VICINITY WITH RESPECT TO THE ASSIGNMENT OF THE WORK IN QUESTION. THERE IS NO NEED TO RECOUNT THEIR EVIDENCE IN DETAIL SINCE IT IS CLEAR THAT THERE HAVE BEEN NUMEROUS PROJECTS INVOLVING THE INSTALLATION OF METAL PANS AND PADS IN SUSPENDED CEILINGS AND THESE PROJECTS HAVE BEEN SUBSTANTIALLY COMPLETED BY MEMBERS OF THE RESPONDENT CARPENTERS UNION. THERE WERE A FEW INSTANCES IN WHICH MEMBERS OF THE SHEET METAL WORKERS UNION WERE ASSIGNED THIS WORK AS A RESULT OF REQUESTS BY THE RESPONDENT SHEET METAL WORKERS UNION TO HAVE THE WORK ASSIGNED TO ITS MEMBERS. HOWEVER, WITHOUT EXCEPTION, THE EMPLOYER CONCERNED FOUND IT IMPOSSIBLE TO COMPLETE THE JOB USING MEMBERS OF THE RESPONDENT SHEET METAL WORKERS UNION, EVEN AS PART OF A MUCH LARGER CREW OF CARPENTERS. THE PRIMARY REASON GIVEN FOR THIS WAS THAT THE SHEET METAL WORKERS WERE NOT ABLE TO PERFORM AS MUCH WORK IN A GIVEN PERIOD OF TIME AS MEMBERS OF THE RESPONDENT CARPENTERS UNION. THE PATTERN IN EACH EXAMPLE CITED WAS THAT AFTER A SHORT PERIOD OF TIME THE WORK WAS RE-ASSIGNED TO MEMBERS OF THE RESPONDENT CARPENTERS. THIS WAS NOTWITHSTANDING THE FACT THAT THE WAGE RATES FOR THE SHEET METAL WORKERS WERE SOME 10 TO 15% HIGHER THAN THOSE OF THE CARPENTERS.

5. THE RESPONDENT SHEET METAL WORKERS DID NOT CALL ANY EVIDENCE IN SUPPORT OF THEIR CLAIM THAT THE WORK SHOULD BE ASSIGNED TO MEMBERS OF THEIR UNION RATHER THAN THE MEMBERS OF THE RESPONDENT CARPENTERS UNION. HAVING REGARD TO THE EVIDENCE OF THE AREA PRACTICE, THE ABILITY TO PERFORM THE WORK IN DISPUTE, AND THE ECONOMIC CONSIDERATIONS INVOLVED,

WE HAVE NO DOUBT THAT THE WORK IN DISPUTE SHOULD BE ASSIGNED TO MEMBERS OF THE RESPONDENT CARPENTERS UNION.

6. WE MUST, HOWEVER, DEAL WITH THE REQUEST MADE AT THE HEARING BY COUNSEL FOR THE COMPLAINANT THAT THE BOARD SHOULD EXERCISE ITS DISCRETION IN SS.2 OF SECTION 81 AND MAKE THE DIRECTION IN THE PRESENT CASE BINDING ON THE PARTIES FOR JOBS OTHER THAN THE JOB IN DISPUTE AND FOR FUTURE JOBS IN SUCH A GEOGRAPHIC AREA AS THE BOARD CONSIDERS ADVISABLE. THE COMPLAINANT DID NOT REQUEST THIS RELIEF IN ITS COMPLAINT AND WE ARE OF THE VIEW THAT SUCH AN AMENDMENT TO THE RELIEF REQUESTED MADE AT THE CLOSE OF THE HEARING IS UNTIMELY.

7. IN VIEW OF THE FOREGOING, THE BOARD HEREBY DIRECTS THE COMPLAINANT TO CONTINUE TO ASSIGN THE WORK OF THE INSTALLATION OF RADIANT AND NON-RADIANT METAL PANS AND PADS (BY BURGESS-MANNING) AT THE OTTAWA CHILDREN'S HOSPITAL PROJECT, OTTAWA, ONTARIO, TO MEMBERS OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 2041.

4811-73-M: UNITED STEELWORKERS OF AMERICA, LOCAL 958 (APPLICANT) V. CONSOLIDATED CANADIAN FARADAY LIMITED AND DUMBARTON MINES LTD. (RESPONDENTS).

BEFORE: J. D. O'SHEA, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: L. A. MACLEAN AND NELS THIBAUT FOR THE APPLICANT; JAMES T. HEATHER FOR THE RESPONDENTS.

DECISION OF THE BOARD: JANUARY 7, 1974.

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2. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FINDS THAT CONSOLIDATED CANADIAN FARADAY LIMITED AND DUMBARTON MINES LTD. ARE ASSOCIATED OR RELATED BUSINESSES UNDER COMMON CONTROL OR DIRECTION AND ACCORDINGLY CONSTITUTE ONE EMPLOYER FOR THE PURPOSES OF THE ACT WITH RESPECT TO THE EMPLOYEES WITH WHOM WE ARE HERE CONCERNED.

3. THIS IS AN APPLICATION FOR RIGHT OF ACCESS UNDER THE PROVISIONS OF SECTION 10 OF THE LABOUR RELATIONS ACT.

4. HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS AND AGREEMENTS OF THE PARTIES, THE BOARD DIRECTS THAT THE RESPONDENTS ALLOW EITHER NELS THIBAUT, DON POSNICK, CLAUDE MORRISSETTE OR ED VERONEAU, REPRESENTATIVES OF THE APPLICANT, ACCESS TO THE PROPERTY CONTROLLED BY THE RESPONDENTS AT WHICH CERTAIN OF THE RESPONDENTS' EMPLOYEES RESIDE, FOR THE PURPOSE OF ATTEMPTING TO PERSUADE SUCH EMPLOYEES TO JOIN THE APPLICANT TRADE UNION IN ACCORDANCE WITH THE PROVISIONS OF SECTION 10 OF THE ACT.

5. THE BOARD DIRECTS THAT ACCESS BE PROVIDED TO THE ABOVE NAMED REPRESENTATIVES --

ON FRIDAY, JANUARY 18, 1974 FROM 10:00 A.M. TO 11:00 A.M.
AND FROM 6:00 P.M. TO 8:00 P.M.;

ON SATURDAY, JANUARY 19, 1974 FROM 10:00 A.M. TO 11:00 A.M.
AND FROM 5:00 P.M. TO 10:00 P.M.;

ON SUNDAY, JANUARY 20, 1974 FROM 10:00 A.M. TO 11:00 A.M.
AND FROM 5:00 P.M. TO 10:00 P.M.; AND

ON MONDAY, JANUARY 21, 1974 FROM 10:00 A.M. TO 11:00 A.M.
AND FROM 6:00 P.M. TO 8:00 P.M.

4642-73-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. FRUEHAUF TRAILER COMPANY OF CANADA LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS H. ADE AND E. BOYER.

APPEARANCES AT THE HEARING: L. A. MACLEAN AND WEBSTER CORNWALL FOR THE APPLICANT; W. GIBSON GRAY, Q.C., A. PURDON AND IAN JOHNSTON FOR THE RESPONDENT.

DECISION OF THE BOARD: JANUARY 7, 1974.

1. THIS IS AN APPLICATION FOR CERTIFICATION IN WHICH THE BOARD ON NOVEMBER 14, 1973 DIRECTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN. THE BALLOT BOX CONTAINING ALL THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE WAS SEALED AND THIS MATTER WAS LISTED FOR HEARING TO AFFORD THE RESPONDENT AN OPPORTUNITY "TO MAKE SUBMISSIONS WITH RESPECT TO A TIME BAR".

2. PRIOR TO THE MAKING OF THIS APPLICATION, THE APPLICANT HAD MADE AN EARLIER APPLICATION ON WHICH A HEARING WAS HELD AND AN EXAMINER WAS APPOINTED TO INQUIRE INTO THE ALLEGATIONS OF "NON-PAY". ON SEPTEMBER 26, 1973, COUNSEL FOR THE APPLICANT REQUESTED LEAVE TO WITHDRAW THE EARLIER APPLICATION. IN THE REQUEST FOR WITHDRAWAL COUNSEL FOR THE APPLICANT STATED:

FOLLOWING ADVICE RECEIVED BY ME FROM MR. FILION,
COUNSEL ON BEHALF OF THE INTERVENING EMPLOYEES, THAT HIS
CLIENTS HAD MADE CERTAIN ALLEGATIONS OF "NON-PAY"
CONCERNING THE UNION MEMBERSHIP EVIDENCE, AN INVESTIGATION
WAS MADE INTO THE MATTER BY OUR CLIENT, THE U.A.W.

AS A RESULT OF THAT INVESTIGATION, THE U.A.W. NOW HAS REASON TO BELIEVE THAT THERE HAVE BEEN SOME IRREGULARITIES IN THE RECEIPT OF MONIES WHICH RESULTED IN SOME APPLICANTS FOR MEMBERSHIP NOT THEMSELVES PAYING THE SUM OF \$1.00.

THESE DISCLOSURES LEAVE THE U.A.W. WITH NO OTHER ALTERNATIVE BUT TO BRING THEM TO THE ATTENTION OF THE BOARD AND TO REQUEST THE BOARD'S LEAVE TO THE WITHDRAWAL OF THIS APPLICATION.

3. AS INDICATED ABOVE, THE RESPONDENT OBJECTED TO THE GRANTING OF THE REQUEST FOR WITHDRAWAL AND REQUESTED LEAVE TO MAKE REPRESENTATIONS CONCERNING A BAR TO FURTHER APPLICATIONS. THE BOARD, DIFFERENTLY CONSTITUTED, ON OCTOBER 24, 1973, FOR THE REASONS THEREIN STATED, DECIDED "THAT THE REPRESENTATIONS THE RESPONDENT SEEKS TO MAKE OUGHT PROPERLY TO BE HEARD IN THE EVENT THAT THE APPLICANT REAPPLIES FOR CERTIFICATION RATHER THAN AT THE PRESENT TIME. THE RESPONDENT'S SUBMISSIONS MAY THEN BE DIRECTED TOWARD THE SECOND ALTERNATIVE CONTAINED IN SECTION 92(1)(1) [sic] OF THE ACT." THE BOARD THEN PROCEEDED TO DISMISS THE EARLIER APPLICATION.

4. AT THE HEARING IN THE INSTANT APPLICATION, THE RESPONDENT TOOK THE POSITION THAT THE BOARD IN THE EARLIER APPLICATION OUGHT TO HAVE GIVEN IT AN OPPORTUNITY TO ESTABLISH THE NON-PAY ALLEGATIONS THAT HAD BEEN MADE IN ORDER THAT THE EVIDENCE WOULD THEN BE BEFORE THE BOARD ON WHICH IT WISHED TO RELY IN SUPPORT OF ITS ARGUMENT THAT A BAR OUGHT TO BE IMPOSED ON FURTHER APPLICATIONS PURSUANT TO THE PROVISIONS OF SECTION 92(2)(1) OF THE ACT.

5. HAVING CONSIDERED ALL THE REPRESENTATIONS OF THE PARTIES, THE BOARD IS OF THE VIEW THAT ALTHOUGH THE FIRST DIVISION OF THE BOARD MIGHT HAVE DIRECTED A HEARING TO AFFORD THE RESPONDENT AN OPPORTUNITY TO MAKE ITS SUBMISSIONS, THE RESPONDENT HAS NOT BEEN PREJUDICED BY THE FACT THAT IT HAD TO WAIT UNTIL AFTER THE TAKING OF THE PRE-HEARING VOTE IN THIS MATTER TO MAKE ITS SUBMISSIONS. THE BOARD, BY SEALING THE BALLOT BOX, HAS PRESERVED THE RIGHT OF THE RESPONDENT TO MAKE WHATEVER REPRESENTATIONS IT WISHED TO MAKE AND HAS ALSO PRESERVED THE RIGHT OF THE APPLICANT TO HAVE THE PRE-HEARING REPRESENTATION VOTE CONDUCTED AS SOON AS POSSIBLE IN ORDER THAT THE TRUE WISHES OF THE EMPLOYEES BE OBTAINED IMMEDIATELY FOLLOWING THE MAKING OF ITS APPLICATION. THE WISHES OF THE EMPLOYEES AS DISCLOSED ON THEIR BALLOTS HAVE BEEN SECURED AND WILL NOT BE DISCLOSED TO THE PARTIES UNTIL SUCH TIME AS THE ISSUES RAISED BY THE PARTIES HAVE BEEN DEALT WITH.

6. FOR THE PURPOSE OF CONSIDERING THE RESPONDENT'S REQUEST THAT A BAR BE IMPOSED, THE BOARD IS PREPARED TO ASSUME THAT THE "IRREGULARITIES" WHICH WERE REFERRED TO BY THE APPLICANT IN ITS LETTER OF SEPTEMBER 26, 1973 AMOUNTED TO A "NON-PAY" WHICH WOULD CONSTITUTE A FRAUD ON THE BOARD.

7. HOWEVER, THAT MAY BE, IT IS NOTED THAT IN THE INSTANT APPLICATION THE APPLICANT HAS FILED FRESH EVIDENCE OF MEMBERSHIP AND HAS NOT RELIED UPON THE MEMBERSHIP EVIDENCE WHICH WAS QUESTIONED IN THE EARLIER APPLICATION. IN THE INSTANT CASE THE RESPONDENT ADVISED THE BOARD THAT IT WAS NOT MAKING ANY CHARGES AGAINST THE MEMBERSHIP EVIDENCE FILED BY THE APPLICANT. WE MUST THEREFORE FIND THAT WHATEVER THE NATURE OF THE FACTS WHICH INVOLVE THE "NON-PAY" IN THE EARLIER APPLICATION, THOSE FACTS DO NOT REFLECT ON THE MEMBERSHIP EVIDENCE PRESENTLY BEFORE THE BOARD.

8. IN DEALING WITH THE BOARD'S JURISDICTION TO IMPOSE A BAR ON AN UNSUCCESSFUL APPLICANT, THE BOARD IN THE WATSON MANUFACTURING COMPANY OF PARIS LIMITED CASE, OLRB MONTHLY REPORT, AUGUST 1968, P. 441, STATED AS FOLLOWS:

4. IN THE PRESENT CASE, THE INTERVENER ARGUED THAT THE APPLICANT'S APPLICATION IS UNTIMELY SINCE IT WAS MADE WITHIN A MONTH FOLLOWING THE DISMISSAL OF THE APPLICANT'S INTERVENER'S APPLICATION FOR CERTIFICATION (BOARD FILE 13786-67-R). THE INTERVENER FURTHER ARGUED THAT SINCE THE BOARD IMPOSES A BAR AGAINST AN UNSUCCESSFUL APPLICANT FOLLOWING THE TAKING OF A REPRESENTATION VOTE, IN ORDER TO BE CONSISTENT THE BOARD SHOULD ALSO IMPOSE A BAR WHERE IT DISMISSES A UNION BECAUSE OF NON-PAY. THE INTERVENER'S POSITION WAS THAT A UNION WHICH HAS ATTEMPTED TO COMMIT A FRAUD ON THE BOARD BY SUBMITTING MEMBERSHIP CARDS FOR WHICH NO MONEY HAS BEEN RECEIVED IS MORE CULPABLE THAN A UNION WHICH FAILS TO OBTAIN THE SUPPORT OF A MAJORITY OF THE EMPLOYEES IN A REPRESENTATION VOTE. THE INTERVENER THEREFORE ARGUED THAT THE PRESENT APPLICANT WHICH HAD SUBMITTED AN APPLICATION SUPPORTED BY FRAUDULENT EVIDENCE SHOULD NOT BE LEFT IN A POSITION OF ADVANTAGE OVER THE INTERVENER IN THESE CIRCUMSTANCES AND THE BOARD SHOULD THEREFORE FIND THAT THE APPLICANT'S PRESENT APPLICATION IS UNTIMELY.

5. IF THE BOARD'S JURISDICTION WERE EXTENDED SO THAT THE BOARD HAD PUNITIVE POWERS, THERE WOULD BE MERIT IN THE ARGUMENT MADE BY THE INTERVENER. HOWEVER, THE BOARD'S JURISDICTION UNDER THE LABOUR RELATIONS ACT IN AN APPLICATION FOR CERTIFICATION IS CONFINED TO ASCERTAINING THE TRUE WISHES OF EMPLOYEES WITH RESPECT TO THE TRADE UNION'S RIGHT TO REPRESENT THEM IN AN APPROPRIATE BARGAINING UNIT. WHERE THE TRUE WISHES OF EMPLOYEES HAVE BEEN ESTABLISHED WITH THE CERTAINTY PERMITTED BY A REPRESENTATION VOTE, THE BOARD, UNDER THE AUTHORITY OF SECTION 77(2)(1), IMPOSES A BAR OF SIX MONTHS ON FUTURE APPLICATIONS BY THAT UNION. THE BOARD IMPOSES THE BAR WITH THE VIEW TO PROMOTING A SOUND EMPLOYER-EMPLOYEE RELATIONSHIP BY AVOIDING THE CONFUSION AND TURMOIL OF REPETITIVE APPLICATIONS BY A UNION

WHICH HAS BEEN GIVEN FULL AND COMPLETE OPPORTUNITY TO ESTABLISH ITS RIGHT TO REPRESENT THE EMPLOYEES THROUGH A REPRESENTATION VOTE. IN THE EXERCISE OF ITS DISCRETION UNDER SECTION 77(2)(1), THE BOARD ENDEAVOURS TO PROVIDE A COOLING OFF PERIOD DURING WHICH THE EMPLOYEES MAY ASSESS THEIR POSITION WITH RESPECT TO THEIR DESIRE TO BE REPRESENTED BY THE APPLICANT UNION BY TEMPORARILY POSTPONING REPETITIVE APPLICATIONS FOR CERTIFICATION BY THAT UNION.

6. IN THE CASE WHERE NON-PAY HAS BEEN ESTABLISHED AND THE BOARD IS PLACED IN THE POSITION WHERE IT CAN PLACE NO RELIANCE ON THE UNION'S EVIDENCE OF MEMBERSHIP, THE BOARD IS UNABLE TO FIND THAT THE UNION ENJOYS THE SUPPORT OF AT LEAST FORTY-FIVE PER CENT OF THE EMPLOYEES AND THEREFORE HAS NO JURISDICTION TO DIRECT A REPRESENTATION VOTE. IN MAKING THE FINDING THAT IT IS UNABLE TO PLACE RELIANCE ON THE EVIDENCE OF MEMBERSHIP SUBMITTED, SUCH FINDING IS CONCERNED ONLY WITH RESPECT TO THE EVIDENTIARY VALUE OF THE MEMBERSHIP DOCUMENTS. IT IS NOT A FINDING MADE FOLLOWING A TEST OF THE ACTUAL SUPPORT THAT THE UNION ENJOYS AMONG ALL THE COMPANY'S EMPLOYEES.

7. WHILE A UNION, WHICH HAS BEEN FOUND GUILTY OF NON-PAY, HAS BY ITS OWN ACTIVITIES DESTROYED THE EVIDENTIARY VALUE OF ITS MEMBERSHIP EVIDENCE, EITHER IN WHOLE IF A UNION OFFICIAL IS INVOLVED, OR IN PART IF A RANK AND FILE EMPLOYEE HAS PERPETRATED THE FRAUD, IT CANNOT BE SAID THAT THE BOARD IN MAKING SUCH FINDING HAS ASCERTAINED THE TRUE WISHES OF THE EMPLOYEES. ON THE CONTRARY, THE BOARD IS UNABLE TO ASCERTAIN THE WISHES OF THE EMPLOYEES SINCE THE EVIDENCE OF THEIR WISHES HAS BEEN CAST IN DOUBT. WHERE THE TRUE WISHES OF EMPLOYEES HAVE NOT BEEN ASCERTAINED, IT IS NOT THE BOARD'S PRACTICE TO IMPOSE A BAR ON FUTURE APPLICATIONS BY THE UNSUCCESSFUL UNION.

8. WE ARE OF OPINION THAT THE LABOUR RELATIONS ACT HAS NOT EMPOWERED THE BOARD TO TAKE DIRECT DISCIPLINARY ACTION AGAINST AN OFFENDING UNION, ANY MORE THAN THE BOARD CAN TAKE DIRECT PUNITIVE ACTION AGAINST A COMPANY WHICH HAS ACTED CONTRARY TO THE PROVISIONS OF THE ACT. IF A TRADE UNION, A COMPANY OR ANY PERSON ENGAGES IN ACTIONS CONTRARY TO THE ACT AND AN OPPOSING PARTY WISHES TO HAVE THE OFFENDING PARTY PUNISHED, THE APPROPRIATE REMEDY MAY BE FOUND IN SECTION 69 OF THE ACT AND A PARTY WISHING TO INVOKE THIS REMEDY IS AT LIBERTY TO APPLY FOR CONSENT TO PROSECUTE.

9. WHILE THE BOARD HAS CERTAIN DISCRETIONARY POWERS TO BAR UNSUCCESSFUL APPLICANTS, SUCH DISCRETIONARY POWERS

MAY ONLY BE EXERCISED IN A MANNER CONSISTENT WITH THE BOARD'S JURISDICTION, E.G., TO DETERMINE THE TRUE WISHES OF EMPLOYEES IN AN APPLICATION FOR CERTIFICATION. WE ARE THEREFORE OF OPINION THAT TO BAR AN APPLICANT BECAUSE OF PREVIOUS IRREGULAR OR IMPROPER CONDUCT WOULD NOT BE A PROPER EXERCISE OF THE BOARD'S DISCRETION UNDER SECTION 77(2)(1) OF THE LABOUR RELATIONS ACT UNLESS SUCH PRIOR CONDUCT REFLECTED UPON THE MEMBERSHIP EVIDENCE FILED IN A SUBSEQUENT APPLICATION. WHERE, AS IN THIS CASE, A UNION FILES FRESH EVIDENCE OF MEMBERSHIP WHICH IS UNTAINTED BY PRIOR ACTIVITIES, IT CANNOT PROPERLY BE SAID THAT THE FRESH EVIDENCE IS UNRELIABLE EVIDENCE. IF THE FRESH MEMBERSHIP EVIDENCE IS RELIABLE EVIDENCE, THE BOARD MUST GIVE EFFECT TO IT PURSUANT TO THE PROVISIONS OF SECTION 7 OF THE ACT.

9. WE ARE OF THE VIEW THAT THE ABOVE REASONING IS EQUALLY APPLICABLE TO THE FACTS OF THE INSTANT CASE.

10. HAVING REGARD TO THE DECISION IN THE TRW ELECTRONIC COMPONENTS LTD. CASE, 70 CLLC ¶14,003, AND THE SOO DAIRIES LIMITED CASE, OLRB MONTHLY REPORT, JULY 1971, P. 439, AND FOR THE REASONS GIVEN IN THE WATSON MANUFACTURING COMPANY CASE QUOTED ABOVE, THE BOARD DETERMINES, IN THE EXERCISE OF ITS DISCRETION, THAT IT WOULD BE INAPPROPRIATE TO REFUSE TO ENTERTAIN THE INSTANT APPLICATION BY THE APPLICANT IN VIEW OF THE FACT THAT THE BOARD DOES NOT CONSIDER THE FRESH EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT IN THIS CASE TO BE TAINTED BY THE ACTIONS WHICH LED TO THE DISMISSAL OF THE EARLIER APPLICATION.

11. THE BOARD ACCORDINGLY DIRECTS THE REGISTRAR TO CAUSE ALL THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE IN THIS MATTER TO BE COUNTED AND REPORT TO THE BOARD.

4528-73-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 91, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. UNIVERSAL TERMINALS LTD. (RESPONDENT).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS H. J. F. ADE AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: I. J. THOMSON AND W. BEATTIE FOR THE APPLICANT; G. G. SMITH, G. T. KANEB, L. TESSIER AND J. G. GAUTHIER FOR THE RESPONDENT.

DECISION OF THE BOARD:

JANUARY 11, 1974.

1. PURSUANT TO THE DECISION OF THE BOARD DATED OCTOBER 16, 1973, THIS MATTER WAS LISTED FOR CONTINUATION OF HEARING AT CORNWALL ON

DECEMBER 20, 1973, AT WHICH TIME ALL PARTIES AGREED THAT BOARD MEMBER BOYER BE SUBSTITUTED IN THESE PROCEEDINGS BY BOARD MEMBER O'KEEFFE.

2. THE APPLICANT IS SEEKING BARGAINING RIGHTS ON BEHALF OF CERTAIN DRIVERS IN THE EMPLOY OF THE RESPONDENT. THE RESPONDENT, IN OPPOSITION TO THIS APPLICATION STATES THAT THE APPROPRIATE BARGAINING UNIT, SUBJECT TO CERTAIN EXCLUSIONS NOT HERE RELEVANT, SHOULD CONSIST OF ALL OF ITS EMPLOYEES WORKING AT OR OUT OF ITS TERMINAL WHICH WOULD INCLUDE ITS YARD AND GENERAL MAINTENANCE EMPLOYEES AND A SERVICE STATION ATTENDANT.

3. THE EVIDENCE DISCLOSED THAT THE RESPONDENT RETAINS THE SERVICES OF TWO DISTINCTIVE TYPES OF DRIVERS. THE FIRST GROUP CONSISTS OF SIX DRIVERS WHO ARE EXCLUSIVELY ENGAGED ON TRACTOR-TRAILER VEHICLES KNOWN AS "TRAINS" FOR THE HAULING OF BUNKER OIL FROM MONTREAL TO TWO PRIMARY STORAGE AREAS IN THE CITY OF CORNWALL. ALTHOUGH, AS OF THE DATE OF THIS APPLICATION, THE GOVERNMENT HAS NOT PROVIDED ANY SPECIAL LICENCING ARRANGEMENTS FOR THE DRIVERS ENGAGED IN THESE ACTIVITIES OUTSIDE OF THE NORMAL "CHAUFFEUR'S LICENCE", REQUIREMENT, IT IS CLEAR THAT THESE DRIVERS POSSESS HIGHER QUALIFICATIONS THAN THOSE DRIVERS IN THE SECOND GROUP, WHO ARE ENGAGED BY THE RESPONDENT TO OPERATE VEHICLES LOCALLY IN THE CITY OF CORNWALL. THE EVIDENCE FURTHER DISCLOSES THAT ON OCCASION SOME OF THE GENERAL MAINTENANCE EMPLOYEES AT THE TERMINAL WOULD ALSO OPERATE THE VEHICLES UTILIZED BY THE DRIVERS IN THE SECOND GROUP.

4. THE RESPONDENT'S POSITION AS REGARDS THESE SIX DRIVERS ENGAGED IN THE FIRST GROUP, IS THAT THEY ARE NOT ITS EMPLOYEES, TWO BEING EMPLOYEES OF A FIRM KNOWN AS A. J. MACDONALD, WHILE THE REMAINING FOUR DRIVERS ARE EMPLOYEES OF A FIRM KNOWN AS FAIRVIEW LEASING, AND THAT THE RESPONDENT HAS SIMPLY CONTRACTED OUT TO THESE FIRMS THE RESPECTIVE MAINTENANCE FUNCTIONS AND THE SUPPLY OF DRIVERS ASSOCIATED WITH ITS OWN THREE VEHICLES IN THIS PARTICULAR HAULING OPERATION. NEVERTHELESS, THERE WAS NO EVIDENCE ADDUCED BEFORE THIS BOARD TO SUBSTANTIATE THIS POSITION, EITHER FROM THE MACDONALD FIRM OR FAIRVIEW LEASING, ALTHOUGH IT WOULD APPEAR THAT A REPRESENTATIVE FROM ONE OF THESE FIRMS WAS IN ATTENDANCE DURING THE COURSE OF THE HEARING. HOWEVER, AS OF THE DATE OF THE FILING OF THIS APPLICATION ON OCTOBER 2, 1973, THE EVIDENCE DISCLOSES THAT THE RESPONDENT HANDLED ALL PAYROLL ACTIVITIES IN RELATION TO THESE INDIVIDUALS AND THAT THE CHEQUES ISSUED TO THEM IN THIS REGARD BORE THE RESPONDENT'S NAME. IT WAS ALSO IN THIS NAME THAT INCOME TAX, UNEMPLOYMENT INSURANCE AND CANADA PENSION PLAN FILINGS AFFECTING THESE DRIVERS WERE MADE BY THE RESPONDENT. HAVING THEREFORE CAREFULLY REVIEWED THE TOTALITY OF THE EVIDENCE AS ADDUCED IN THIS REGARD, WE ARE SATISFIED THAT AT ALL RELEVANT TIMES THESE DRIVERS ARE EMPLOYEES OF THE RESPONDENT.

5. AS INDICATED IN PARAGRAPH #3 HEREIN, WE FIND THAT THESE SIX DRIVERS POSSESS SPECIAL SKILLS OVER AND ABOVE THOSE IN THE SECOND GROUP WHO ARE EMPLOYED LOCALLY. WHILE THE EMPLOYEES IN THE SECOND GROUP COULD PERFORM TASKS ASSIGNED TO EMPLOYEES IN THE FIRST GROUP,

THE EVIDENCE FURTHER DISCLOSES THAT THOSE IN THE SECOND GROUP COULD NOT PERFORM THE TASKS ASSIGNED TO THE DRIVERS IN THE FIRST GROUP. IN THIS REGARD, WE ARE SATISFIED THAT, TO USE THE BOARD'S PARLANCE, THERE IS NO "FUNCTIONAL COHERENCE AND INTERDEPENDENCE" BETWEEN THESE GROUPS, AND THE DRIVERS IN THE FIRST GROUP COMPRISE IN THEMSELVES A SEPARATE AND DISTINCT UNIT OF EMPLOYEES APPROPRIATE FOR COLLECTIVE BARGAINING.

6. HAVING REGARD TO THESE PARTICULAR CIRCUMSTANCES, THE BOARD THEREFORE FINDS THAT ALL DRIVERS EXCLUSIVELY ENGAGED BY THE RESPONDENT IN ITS "TRAINS" OPERATIONS, SAVE AND EXCEPT FOREMEN AND DISPATCHERS AND PERSONS ABOVE THE RANK OF FOREMAN AND DISPATCHER CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING (HEREINAFTER REFERRED TO AS BARGAINING UNIT #1).

7. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN SIXTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN BARGAINING UNIT #1, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON OCTOBER 12, 1973, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2) (J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

8. A CERTIFICATE WILL ISSUE TO THE APPLICANT WITH RESPECT TO BARGAINING UNIT #1.

9. HAVING CAREFULLY REVIEWED THE TOTALITY OF THE EVIDENCE AS ADDUCED IN RELATION TO THE REMAINING EMPLOYEES AFFECTED BY THIS APPLICATION, WE ARE SATISFIED THAT, WITH THE EXCEPTION OF THE SERVICE STATION ATTENDANT, A SUFFICIENT COMMUNITY OF INTEREST DOES EXIST AMONGST THESE PARTICULAR EMPLOYEES SO AS TO WARRANT THEIR INCLUSION IN A SINGLE BARGAINING UNIT.

10. HAVING REGARD TO ALL OF THE CIRCUMSTANCES, THE BOARD THEREFORE FINDS THAT ALL EMPLOYEES OF THE RESPONDENT WORKING AT OR OUT OF ITS TERMINAL AT CORNWALL, SAVE AND EXCEPT FOREMEN AND DISPATCHERS, PERSONS ABOVE THE RANK OF FOREMAN AND DISPATCHER, OFFICE AND SALES STAFF, SERVICE STATION ATTENDANT AND PERSONS DEFINED IN BARGAINING UNIT #1 HEREIN, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING (HEREINAFTER REFERRED TO AS BARGAINING UNIT #2).

11. THE BOARD IS FURTHER SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN THIRTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN BARGAINING UNIT #2, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON OCTOBER 12, 1973, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

12. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN BARGAINING UNIT #2. ALL EMPLOYEES OF THE RESPONDENT IN BARGAINING UNIT #2 ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

13. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BE REPRESENTED BY THE APPLICANT IN THEIR EMPLOYMENT RELATIONS WITH THE RESPONDENT.

14. THE MATTER IS REFERRED TO THE REGISTRAR.

1816-72-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. TRANSPORT PERSONNEL AND PLACEMENT LIMITED (RESPONDENT).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFFE AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: H. F. CALEY AND O. URBANOVICS FOR THE APPLICANT; L. S. CRACKOWER FOR THE RESPONDENT.

DECISION OF VICE-CHAIRMAN FRANK V. BOSCARIOL AND BOARD MEMBER P. J. O'KEEFFE: JANUARY 11, 1974.

1. PURSUANT TO THE DECISION OF THE BOARD IN THIS MATTER DATED APRIL 10, 1973, THE EXAMINER CONVENED VARIOUS MEETINGS OF THE PARTIES WHICH CULMINATED IN THE REPORT OF THE EXAMINER HEREIN DATED JANUARY 19, 1973 AND AN AGREED UPON STATEMENT OF FACTS WHICH WAS FILED WITH THE BOARD.

2. IN THIS APPLICATION FOR CERTIFICATION, THE APPLICANT IS SEEKING A BARGAINING UNIT COMPOSED OF ALL EMPLOYEES OF THE RESPONDENT UNDER CONTRACT AS TRUCK DRIVERS WITH WESTEEL-ROSCO LIMITED (HEREINAFTER REFERRED TO AS WESTEEL) IN METROPOLITAN TORONTO.

3. THE EVIDENCE DISCLOSES THAT THE RESPONDENT IS ENGAGED IN THE BUSINESS OF SUPPLYING TRUCK DRIVERS (AND OCCASIONALLY, MECHANICS) TO ITS CUSTOMERS. IN THIS REGARD, IT EMPLOYS APPROXIMATELY 116 DRIVERS FOR ITS 24 CUSTOMERS, AND OF THIS NUMBER, 13 ARE SUPPLIED TO WESTEEL WHICH OPERATES OUT OF 4 PLANTS SITUATE IN METROPOLITAN TORONTO. THE TRUCKS OPERATED BY THESE DRIVERS ARE LEASED TO WESTEEL BY A FIRM KNOWN AS TWENTY-SEVEN CARTAGE LIMITED.

4. THE EVIDENCE FURTHER DISCLOSES THAT THESE DRIVERS, WHO MAY GENERALLY BE DESCRIBED AS LONG SERVICE EMPLOYEES OF THE RESPONDENT REGULARLY EMPLOYED AT WESTEEL, WEAR A DISTINCTIVE BLUE UNIFORM WITH AN IDENTIFYING WESTEEL CREST. THEY PUNCH A TIME CLOCK IN AND OUT OF WESTEEL'S OFFICE AND VIRTUALLY NEVER ATTEND THE OFFICES OF THE RESPONDENT.

ALTHOUGH THEY TELEPHONE MR. ZUCK, THE OWNER OF THE RESPONDENT FOR INSTRUCTIONS REGARDING SPECIFIC PROBLEMS THAT MAY ARISE, THEIR DAILY ROUTINE IS DIRECTED BY WESTEEL. THEY ARE THE ONLY EMPLOYEES OF THE RESPONDENT WHO ARE GUARANTEED 40 HOURS AFTER SIX MONTHS OF EMPLOYMENT. IN CONTRAST TO THE REMAINDER OF THE RESPONDENT'S EMPLOYEES WHO ARE PAID ON A DIFFERING BASIS DEPENDING ON WHOM THEY ARE WORKING FOR, (E.G. SOME ARE PAID ON A TRIP BASIS, SOME ON A MILEAGE BASIS AND SOME ON A WEEKLY BASIS), THE DRIVERS AT WESTEEL ARE ALL HOURLY-RATED EMPLOYEES. IN THIS REGARD, THEIR CHEQUES EMANATE FROM THE RESPONDENT'S HEAD OFFICE WHERE ALL PAYROLL DEDUCTIONS ARE MADE AND THEY ARE GIVEN THE OPTION OF ENROLLING IN THE RESPONDENT'S PRIVATE MEDICAL SCHEME. THESE CHEQUES ARE THEN DELIVERED TO A DISPATCHER AT THE WESTEEL PREMISES WHO THEN INDIVIDUALLY DISPERSES THEM TO THE DRIVERS.

5. THE EVIDENCE CONCERNING THE DEGREE OF TRANSFERABILITY OF THESE DRIVERS IS EXTENSIVE. IN THIS REGARD, IT IS CLEAR THAT WITHIN A ONE YEAR PERIOD PRECEDING THE DATE OF THE FILING OF THIS APPLICATION ON APRIL 4, 1972, ONLY TWO EMPLOYEES WERE TEMPORARILY TRANSFERRED TO LOCATIONS OTHER THAN WESTEEL'S PREMISES. THIS WAS FOR A TOTAL PERIOD OF 69 1/2 HOURS, THE BULK OF WHICH (VIZ. 57 1/2 HOURS) INVOLVED ONLY ONE EMPLOYEE. DURING THIS SAME ONE YEAR PERIOD OF TIME, ONLY ONE EMPLOYEE REGULARLY EMPLOYED WITH AN ANOTHER CUSTOMER HAS BEEN TEMPORARILY TRANSFERRED TO THE WESTEEL PREMISES AND THIS WAS ONLY FOR A SHORT INTERVAL OF 8 1/4 HOURS. THERE IS NO EVIDENCE BEFORE US CONCERNING ANY PERMANENT TRANSFERS IN OR OUT OF THE BARGAINING UNIT AS PROPOSED BY THE APPLICANT.

6. HAVING CAREFULLY REVIEWED THE TOTALITY OF THE EVIDENCE AS ADDUCED, WE ARE SATISFIED THAT THE DEGREE OF TRANSFERABILITY AND INTERCHANGE AFFECTING THE EMPLOYEES ENCOMPASSED IN THE BARGAINING UNIT AS PROPOSED BY THE APPLICANT, IS RELATIVELY INSIGNIFICANT. WE ARE FURTHER SATISFIED THAT THEIR ASSIGNMENT TO WESTEEL IS OF A STABLE AND PERMANENT NATURE AND THAT AS SUCH, THESE DRIVERS CONSTITUTE A FUNCTIONALLY COHESIVE GROUP OF EMPLOYEES IN THEMSELVES WHICH IS SEPARATE AND DISTINCT FROM THE REMAINDER OF THE RESPONDENT'S EMPLOYEES. IN SHORT, WE FIND THAT A COMMUNITY OF INTEREST DOES EXIST AMONGST THESE DRIVERS AT WESTEEL.

7. THE APPLICANT HAS ALSO DRAWN TO THE ATTENTION OF THIS BOARD THE FACT THAT OF THE 13 EMPLOYEES ENCOMPASSED IN ITS PROPOSED UNIT, 11 OF SUCH EMPLOYEES HAVE SIGNED MEMBERSHIP CARDS IN THE APPLICANT. IT IS SUBMITTED IN THIS RESPECT THAT THE BOARD SHOULD INFER FROM SUCH A HIGH PERCENTAGE OF MEMBERSHIP THAT A SIGNIFICANT PROPORTION OF THESE EMPLOYEES DESIRE TO BE REPRESENTED BY THE APPLICANT SEPARATE AND APART FROM THE OTHER EMPLOYEES OF THE RESPONDENT. IT IS CLEAR THAT SECTION 6(1) OF THE LABOUR RELATIONS ACT DOES CONTEMPLATE THE WISHES OF THE EMPLOYEES AS A FACTOR WHICH MAY BE CONSIDERED BY THIS BOARD IN DETERMINING THE QUESTION OF THE APPROPRIATE BARGAINING UNIT. IN OUR OPINION, WE ARE ENTITLED TO DRAW THE INFERENCE AS SUGGESTED TO US BY THE APPLICANT WHERE, SUCH AS IN THE CIRCUMSTANCES OF THIS CASE, NONE OF THE EMPLOYEES IN THE APPLICANT'S PROPOSED BARGAINING UNIT HAVE FILED

ANY FORMAL OPPOSITION TO THIS APPLICATION. (IN THIS REGARD SEE THE BOARD OF HEALTH OF THE YORK-OSHAWA DISTRICT HEALTH UNIT CASE OLRB M.R. JUNE 1969 P. 340 AS QUOTED IN THE EAST YORK PUBLIC LIBRARY BOARD CASE [1971] OLRB 120 AT PAGE 122 AND 123.)

8. HAVING CAREFULLY REVIEWED THE TOTALITY OF THE EVIDENCE AS ADDUCED AND TAKING INTO ACCOUNT THE PRINCIPLES ABOVE CITED TOGETHER WITH THE REPRESENTATIONS OF THE PARTIES, THE BOARD THEREFORE FINDS THAT ALL EMPLOYEES OF THE RESPONDENT TRANSPORT PERSONNEL AND PLACEMENT LIMITED UNDER CONTRACT AS TRUCK DRIVERS WITH WESTEEL-ROSCO LIMITED IN METROPOLITAN TORONTO SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

. . .

10. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER J. E. C. ROBINSON, Q.C.: JANUARY 11, 1974.

I DISSENT.

I REGRET THAT I AM UNABLE TO AGREE WITH THE DECISION OF THE MAJORITY IN FINDING THAT THE DRIVERS OF THE RESPONDENT ENGAGED AT WESTEEL-ROSCO LIMITED FORM AN APPROPRIATE BARGAINING UNIT IN PREFERENCE TO A UNIT OF ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO SAVE AND EXCEPT CERTAIN MANAGERIAL CLASSIFICATIONS.

I MAKE THIS FINDING BASED UPON THE DEGREE OF TRANSFERABILITY AND INTERCHANGE OF THE DRIVERS BETWEEN THE 24 CUSTOMERS OF THE RESPONDENT, THE FACT THAT ALL EMPLOYEES OF THE RESPONDENT ARE ENGAGED AS TRUCK DRIVERS (WITH THE EXCEPTION OF SUNDRY MECHANICS) THE FACT THAT ALL DRIVER EMPLOYEES DRIVE TRUCKS OWNED BY A THIRD PARTY, AND ALL EMPLOYEES ARE PAID AND DIRECTED FROM THE HEAD OFFICE OF THE COMPANY, WITH CHEQUES AND PAYROLL DEDUCTIONS MADE FROM SUCH OFFICE. IN ADDITION, ALL EMPLOYEES ARE ELIGIBLE TO JOIN THE PRIVATE HEALTH PLAN OF THE EMPLOYER.

WHAT PARTICULARLY DISTURBS AND DISTRESSES ME IS THAT IN MY OPINION THAT IT MAY BE ARGUED THAT THE MAJORITY DECISION WOULD INDICATE THAT THE APPLICANT OR ANOTHER TRADE UNION IS NOW IN A POSITION TO APPLY FOR 24 SEPARATE BARGAINING UNITS, VIZ. THE TOTAL NUMBER OF CUSTOMERS FOR WHICH THE RESPONDENT SUPPLIES DRIVERS, AND SUCH FRAGMENTATION BY THE BOARD OF A BARGAINING UNIT IS NEITHER SUPPORTED BY THE JURISPRUDENCE OF THE BOARD, NOR, IN MY RESPECTFUL OPINION, ENVISIONED BY THE LEGISLATION CONTAINED IN THE LABOUR RELATIONS ACT.

FOR REASONING SIMILAR TO SOME OF THAT CONTAINED IN THE FAIRVIEW CORPORATION LIMITED CASE [1971] OLRB M.R. 415 I WOULD HAVE FOUND THAT THE APPROPRIATE BARGAINING UNIT WOULD ENCOMPASS ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO WITH CERTAIN MANAGERIAL EXCEPTIONS.

I DO NOT WISH TO DEPART FROM MY DECISION WITHOUT COMMENTING UPON A PORTION OF THE MAJORITY DECISION AS SET OUT IN PARAGRAPH 7 OF SUCH DECISION. THE MAJORITY AWARD STATES AS FOLLOWS:-

"7. THE APPLICANT HAS ALSO DRAWN TO THE ATTENTION OF THIS BOARD THE FACT THAT OF THE 13 EMPLOYEES ENCOMPASSED IN ITS PROPOSED UNIT, 11 OF SUCH EMPLOYEES HAVE SIGNED MEMBERSHIP CARDS IN THE APPLICANT. IT IS SUBMITTED IN THIS RESPECT THAT THE BOARD SHOULD INFER FROM SUCH A HIGH PERCENTAGE OF MEMBERSHIP THAT A SIGNIFICANT PROPORTION OF THESE EMPLOYEES DESIRE TO BE REPRESENTED BY THE APPLICANT SEPARATE AND APART FROM THE OTHER EMPLOYEES OF THE RESPONDENT. IT IS CLEAR THAT SECTION 6(1) OF THE LABOUR RELATIONS ACT DOES CONTEMPLATE THE WISHES OF THE EMPLOYEES AS A FACTOR WHICH MAY BE CONSIDERED BY THIS BOARD IN DETERMINING THE QUESTION OF THE APPROPRIATE BARGAINING UNIT."

SECTION 6(1) OF THE LABOUR RELATIONS ACT READS AS FOLLOWS:

"6.--(1) UPON AN APPLICATION FOR CERTIFICATION, THE BOARD SHALL DETERMINE THE UNIT OF EMPLOYEES THAT IS APPROPRIATE FOR COLLECTIVE BARGAINING, BUT IN EVERY CASE THE UNIT SHALL CONSIST OF MORE THAN ONE EMPLOYEE AND THE BOARD MAY, BEFORE DETERMINING THE UNIT, CONDUCT A VOTE OF ANY OF THE EMPLOYEES OF THE EMPLOYER FOR THE PURPOSE OF ASCERTAINING THE WISHES OF THE EMPLOYEES AS TO THE APPROPRIATENESS OF THE UNIT."

IT IS TO BE NOTED THAT WHILE THE BOARD HAS THE RIGHT TO DETERMINE THE UNIT OF EMPLOYEES THAT IS APPROPRIATE FOR COLLECTIVE BARGAINING, IT IS INDICATED THAT THE WISHES OF EMPLOYEES AS TO THE APPROPRIATENESS OF THE UNIT SHOULD BE ASCERTAINED ONLY AFTER THE BOARD CONDUCTS A VOTE.

IN ADDITION, THE SIGNIFICANCE OF THE FACT THAT 11 OF 13 OF THE EMPLOYEES IN THE APPLICANTS' PROPOSED BARGAINING UNIT, HAVE SIGNED MEMBERSHIP CARDS IN THE APPLICANT UNION ESCAPES ME COMPLETELY IN CONCLUDING THEREBY THAT SUCH EMPLOYEES WISH TO BE REPRESENTED BY THE APPLICANT IN THE PROPOSED BARGAINING UNIT SEPARATE AND APART FROM ALL OF THE OTHER EMPLOYEES OF THE RESPONDENT.

4786-73-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA, (UE) (APPLICANT) V. TRIDON LIMITED (RESPONDENT) V. TRIDON EMPLOYEES ASSOCIATION (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: R. RUSSELL AND W. LUCAS FOR THE APPLICANT; E. L. STRINGER, Q.C., AND D. SEDGEWICK FOR THE RESPONDENT; H. TURKSTRA FOR THE INTERVENER AND THE OBJECTORS.

DECISION OF RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBER E. BOYER:
JANUARY 14, 1974.

1. THIS IS AN APPLICATION FOR CERTIFICATION IN WHICH THE INTERVENER SEEKS THE DISMISSAL OF THE APPLICATION OR THE DIRECTION OF A REPRESENTATION VOTE.

2. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

3. THE APPLICANT SUBMITS THAT THE INTERVENER IS NOT A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

4. SECTION 1(1)(N) OF THE ACT DEFINES A TRADE UNION AS FOLLOWS:

"TRADE UNION" MEANS AN ORGANIZATION OF EMPLOYEES FORMED FOR PURPOSES THAT INCLUDE THE REGULATION OF RELATIONS BETWEEN EMPLOYEES AND EMPLOYERS AND INCLUDES A PROVINCIAL, NATIONAL OR INTERNATIONAL TRADE UNION AND A CERTIFIED COUNCIL OF TRADE UNIONS.

THE QUESTION BEFORE THE BOARD IS WHETHER THE ASSOCIATION IS AN ORGANIZATION CONTEMPLATED BY SECTION 1(1)(N) OF THE ACT. THE INTERVENER HAS NEVER BEEN CERTIFIED AS A BARGAINING AGENT AND HAS NOT BEEN FOUND TO BE A TRADE UNION IN ANY PROCEEDINGS BEFORE THE BOARD.

5. THE EVIDENCE IS THAT AN ASSOCIATION OF EMPLOYEES OF THE RESPONDENT CAME INTO BEING IN 1961 UNDER THE NAME OF HAMILTON CLAMP & STAMPINGS LTD., EMPLOYEES ASSOCIATION. THE RESPONDENT'S NAME WAS SUBSEQUENTLY CHANGED AND WITH IT THE NAME OF THE ASSOCIATION TO ITS PRESENT FORM.

6. THERE WAS FILED WITH THE BOARD THE CONSTITUTION OF AN ASSOCIATION BEARING THE ORIGINAL NAME OF THE RESPONDENT AS SET OUT ABOVE. THE CONSTITUTION WAS AN UNSIGNED PHOTOSTAT. THE CONSTITUTION STATES THE PURPOSE OF THE ASSOCIATION TO BE THE PROMOTION OF THE WELFARE OF THE MEMBERS AND TO BARGAIN COLLECTIVELY WITH THE EMPLOYER RESPECTING ALL MATTERS AFFECTING TERMS OF EMPLOYMENT. THE CONSTITUTION PROVIDES FOR THREE OFFICERS TO CONDUCT ITS AFFAIRS. THEY ARE A PRESIDENT, A VICE-PRESIDENT AND A SECRETARY-TREASURER. THESE OFFICERS ARE TO BE ELECTED BY SECRET BALLOT FROM AMONG MEMBERS OF THE ASSOCIATION IN GOOD STANDING. IN ADDITION TO OTHER DUTIES OUTLINED IN THE CONSTITUTION, IT STATES THAT THESE THREE OFFICERS SHALL FORM THE NEGOTIATING COMMITTEE. THE CONSTITUTION FURTHER PROVIDES THAT ALL CONTRACTS NEGOTIATED BY THIS COMMITTEE

ON BEHALF OF THE MEMBERSHIP ARE TO HAVE THE APPROVAL OF THE MAJORITY OF THE MEMBERS BEFORE BEING EXECUTED BY THE OFFICERS.

7. THE PROVISIONS WITH RESPECT TO MEMBERSHIP ARE SPARSE. THE CONSTITUTION STATES THAT MEMBERSHIP IS OPEN TO ALL EMPLOYEES EXCEPT OFFICE EMPLOYEES, FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN. ALTHOUGH ITS NATURE IS NOT SET OUT IN THE CONSTITUTION, IT CAN BE INFERRED FROM THE FACT THAT THE CONSTITUTION PRESCRIBES AS ONE OF THE DUTIES OF THE PRESIDENT THAT "HE SHALL ADMINISTER THE OBLIGATION TO ALL NEW MEMBERS" THAT SOME SORT OF FORMAL UNDERTAKING BY MEMBERS IS REQUIRED. MEMBERSHIP FEES, ACCORDING TO THE CONSTITUTION, "SHALL BE SET BY THE MEMBERSHIP IN SUCH AMOUNT AS THE MAJORITY OF THE MEMBERS DECIDE FROM TIME TO TIME". THERE IS NOTHING ELSE IN THE CONSTITUTION GOVERNING THE REQUIREMENT FOR MEMBERSHIP.

8. THE CONSTITUTION, HOWEVER, HAS NOT BEEN ADHERED TO SINCE, AT LEAST, 1965 AND PERHAPS SINCE BEFORE THAT DATE. THE OFFICES OF VICE-PRESIDENT AND SECRETARY-TREASURER HAVE NOT BEEN FILLED. THE PRESIDENT HAS BEEN ELECTED IN A MANNER QUITE DIFFERENT TO THAT LAID DOWN IN THE CONSTITUTION AND THE NEGOTIATING COMMITTEE BOTH AS TO ITS INCUMBENTS AND THE MANNER OF THEIR SELECTION IS AT VARIANCE WITH THE PROVISIONS OF THE CONSTITUTION IN THAT REGARD. THERE HAS BEEN NO ADMINISTERING OF ANY OBLIGATION TO ANYONE NOR HAS THERE BEEN ANY MONEY PAYMENTS MADE BY EMPLOYEES OR MEMBERSHIP CARDS ISSUED SUBSEQUENT TO 1965, WHICH WOULD INDICATE THE EXISTENCE OF A BODY OF MEMBERS. A RESOLUTION WAS PASSED IN JUNE OR JULY 1973 TO CHARGE DUES OF 50¢ PER MONTH. THIS WAS NOT IMPLEMENTED BECAUSE OF THE PRESENT APPLICATION.

9. THE VALUE OF THE CONSTITUTION AS EVIDENCE OF THE PRESENT EXISTENCE OF AN ORGANIZATION WITHIN THE MEANING OF THE DEFINITION OF A TRADE UNION IS VERY SLIGHT AND REALLY SERVES, WHEN ALL THE CIRCUMSTANCES ARE CONSIDERED, FOR NO OTHER PURPOSE THAN TO SHED SOME DIM LIGHT UPON THE SOMEWHAT DISTANTLY REMOVED ORIGINS OF THE INTERVENER. IT HAS BEEN VIRTUALLY ABANDONED AND INOPERATIVE FOR YEARS.

10. IN PRACTICE, THE EMPLOYEES IN THE BARGAINING UNIT ELECT REPRESENTATIVES FROM EACH OF THE RESPONDENT'S DEPARTMENTS. CANDIDATES FOR ELECTION AS DEPARTMENT REPRESENTATIVE ARE NOMINATED BY THE EMPLOYEES AT LARGE FROM AMONG THEMSELVES AND ARE VOTED INTO OFFICE BY SECRET BALLOTS AVAILABLE TO ALL EMPLOYEES. THERE ARE NO PRE-REQUIREMENTS GOVERNING THE RIGHT TO RUN FOR THE OFFICE. THERE ARE SIX OR SEVEN DEPARTMENTS. THE PRESIDENT IS NOMINATED AND ELECTED BY THE DEPARTMENTAL REPRESENTATIVES FROM AMONG THEIR OWN MEMBERS. THIS PROCEDURE HAS BEEN FOLLOWED FOR THE PAST TEN YEARS. THIS GROUP MEETS REGULARLY ONCE A MONTH IN THE RESPONDENT'S CAFETERIA. THE PRESIDENT AND THE DEPARTMENTAL REPRESENTATIVES ELECT THE NEGOTIATING COMMITTEE. THIS GROUP HAS CONCLUDED A SERIES OF WRITTEN AGREEMENTS WITH THE RESPONDENT COVERING PERIODS FROM 1964 TO 1973. COPIES OF THESE AGREEMENTS WERE FILED BY THE INTERVENER. THE AGREEMENTS CONTAIN ALL OF THE CLAUSES REQUIRED TO BE IN A COLLECTIVE AGREEMENT. INCIDENTALLY, THE AGREEMENTS ALSO CONTAIN A PROVISION FOR THE USE OF

COMPANY PREMISES FOR THE HOLDING OF MEMBERSHIP MEETINGS AS PERMITTED UNDER SECTION 38(1)(c) OF THE ACT. MEETINGS OPEN TO ALL EMPLOYEES HAVE BEEN HELD FOR THE PURPOSE OF RATIFYING THE AGREEMENTS.

11. THE QUESTION NOW ARISES AS TO WHETHER, IN VIEW OF THE PRACTICE FOLLOWED FOR THE PAST SEVEN OR EIGHT YEARS, THE INTERVENER CAN BE SAID TO BE AN ORGANIZATION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE ACT.

12. A SUPERFICIAL GLANCE AT THE SITUATION REVEALS WHAT APPEARS TO BE A SUPERSTRUCTURE OF OFFICERS WHO CARRY OUT FUNCTIONS NORMALLY PERFORMED BY OFFICERS OF A TRADE UNION. IT IS, HOWEVER, THE QUESTION OF THE EXISTENCE OF A PROPER SUBSTRATUM THAT CAUSES DIFFICULTY IN FINDING A READY ANSWER TO THE QUESTION BEFORE THE BOARD. THAT IS WHETHER THERE CAN BE SAID TO BE AN ORGANIZATION IN THE ABSENCE OF FORMAL MEMBERSHIP REQUIREMENTS AND FORMAL MUTUAL OBLIGATIONS BETWEEN THE EMPLOYEES CONCERNED BECAUSE OF WHICH THEY MAY BE IDENTIFIABLE AS MEMBERS OF AN ORGANIZATION.

13. IN THE CASE OF ORCHARD ET AL. V. TUNNEY, 8 D.L.R. (2d) (1957) 273 AT PP. 281 AND 282, THE COURT, IN DEALING WITH THE NATURE OF A UNION, STATED: "... APART, THEN, FROM STATUTE THAT A UNION IS HELD TOGETHER BY CONTRACTUAL BONDS SEEMS OBVIOUS; EACH MEMBER COMMITS HIMSELF TO A GROUP ON A FOUNDATION OF SPECIFIC TERMS GOVERNING INDIVIDUAL AND COLLECTIVE ACTION, A COMMITMENT TODAY ALMOST OBLIGATORY, AND MADE ON BOTH SIDES WITH THE INTENT THAT THE RULES SHALL BIND THEM IN THEIR RELATIONS TO EACH OTHER. THAT MEANS THAT EACH IS BOUND TO ALL THE OTHERS JOINTLY. THE TERMS ALLOW FOR THE CHANGE OF THOSE WITHIN THAT RELATION BY WITHDRAWAL FROM OR NEW ENTRANCE INTO MEMBERSHIP. UNDERLYING THIS IS THE ASSUMPTION THAT THE MEMBERS ARE CREATING A BODY OF WHICH THEY ARE MEMBERS AND THAT IT IS AS MEMBERS ONLY THAT THEY HAVE ACCEPTED OBLIGATIONS; THAT THE BODY AS SUCH IS THAT TO WHICH THE RESPONSIBILITIES FOR ACTION TAKEN AS OF THE GROUP ARE TO BE RELATED."

14. EVANS, J.A., IN THE COURSE OF HIS MAJORITY JUDGMENT IN THE ONTARIO COURT OF APPEAL IN ASTGEN ET AL. V. SMITH ET AL., 7 D.L.R. (3d) 1970, 657 AT P. 661, IN DEALING WITH THE QUESTION OF THE LEGAL STATUS OF A TRADE UNION STATED: "... I CONCEDE AT THE OUTSET THAT A LABOUR UNION UNDER THE LABOUR RELATIONS ACT, R.S.O. 1960, c. 202, AND ALLIED LEGISLATION HAS A 'STATUS' CONFERRED BY SUCH LEGISLATION WHICH MAKES IT SOMEWHAT DIFFERENT FROM A FRATERNAL ORGANIZATION OR AN ATHLETIC CLUB BUT APART FROM SUCH STATUTES A LABOUR UNION IS ESSENTIALLY A CLUB, A VOLUNTARY ASSOCIATION WHICH HAS NO EXISTENCE, APART FROM ITS MEMBERS, RECOGNIZED BY LAW. A CLUB IS BASICALLY A GROUP OF PEOPLE WHO HAVE JOINED TOGETHER FOR THE PROMOTION OF CERTAIN OBJECTS AND WHOSE CONDUCT IN RELATION TO ONE ANOTHER IS REGULATED IN ACCORDANCE WITH THE CONSTITUTION, BY-LAWS, RULES AND REGULATIONS TO WHICH THEY HAVE SUBSCRIBED."

15. IN THE PRESENT CASE, THERE ARE NO CONTRACTUAL BONDS OR COMMITMENTS MADE BY THE EMPLOYEES TO EACH OTHER AND THE GROUP. THERE ARE NO

OBLIGATIONS IMPOSED OR ACCEPTED INDICATIVE OF MEMBERSHIP IN A GROUP. THERE ARE NO FEES, DUES OR OTHER MONETARY REQUIREMENTS PAID OR PAYABLE BY EMPLOYEES WHICH MIGHT SERVE TO IDENTIFY THEM AS MEMBERS OF AN ORGANIZATION. FINALLY, THE WORD "ORGANIZATION" IMPLIES THE REGULATION OF CONDUCT BETWEEN MEMBERS BY MEANS OF A CONSTITUTION, BY-LAWS OR RULES AND REGULATIONS TO WHICH THOSE PURPORTING TO BE MEMBERS MAY SUBSCRIBE. THERE HAS BEEN NO SUCH SUBSCRIPTION IN THIS CASE AND THERE ARE, IN FACT, NO MEMBERS IN THE SENSE CONTEMPLATED BY THE FOREGOING CASES. IN TESTIFYING WITH RESPECT TO MONTHLY MEETINGS, THE SECRETARY STATED THE SEVEN ASSOCIATION MEMBERS ATTENDED THE MEETINGS - THAT IS ALL THE REPRESENTATIVES. SHE THEN SAID THERE WERE NO OTHER MEMBERS IN THE PLANT. HER REFERENCE IS OBVIOUSLY TO MEMBERSHIP IN THE COMMITTEE AND NOT TO MEMBERSHIP IN THE ASSOCIATION. IT FOLLOWS, THEREFORE, THAT THE INTERVENER IS NOT AN ORGANIZATION AND THEREFORE CANNOT BE A TRADE UNION WITHIN THE MEANING OF THE LABOUR RELATIONS ACT.

16. THE FACT IS THAT THE EMPLOYEES AT LARGE OF THE RESPONDENT ARE SIMPLY AN UNRESTRICTED ELECTORATE WHOSE ONLY QUALIFICATION TO VOTE IS THAT THEY BE EMPLOYEES OTHER THAN FOREMEN OR OFFICE STAFF. THEY HAVE, FROM TIME TO TIME, ELECTED FELLOW EMPLOYEES TO ACT AS SPOKESMEN WITH MANAGEMENT. THE USE OF SUCH TITLES AS PRESIDENT AND SECRETARY AND DEPARTMENTAL REPRESENTATIVES IN ITSELF DOES NOT, OF COURSE, CREATE AN ORGANIZATION CAPABLE OF BEING FOUND TO BE A TRADE UNION WITHIN THE MEANING OF THE ACT, PARTICULARLY THE ABSENCE OF MUTUALLY OBLIGATED MEMBERS.

17. IN ARRIVING AT ITS DECISION THE BOARD HAS REVIEWED THE FOLLOWING DECISIONS: GOLD CREST PRODUCTS LIMITED CASE, [1973] OLRB REP. 436; THE CANADIAN UNION OF INDUSTRIAL WORKERS V. GILBARCO EMPLOYEES' UNION V. GILBARCO CANADA LTD. CASE, [1971] OLRB REP. 155; THE BOARD OF EDUCATION FOR THE CITY OF TORONTO CASE, [1970] OLRB REP. (SEPTEMBER) 708; THE PETERBOROUGH COUNTY BOARD OF EDUCATION CASE, [1969] OLRB REP. (AUGUST) 636. THESE CASES DO NOT DEAL WITH THE QUESTION OF MEMBERSHIP AND APPEAR TO PROCEED ON THE ASSUMPTION THAT THE VARIOUS BARGAINING AGENTS DEALT WITH ARE COMPOSED OF PROPER MEMBERS. THEY ARE THEREFORE OF LITTLE ASSISTANCE IN THE PRESENT MATTER.

18. THE BOARD FURTHER FINDS THAT SINCE THE INTERVENER IS NOT A TRADE UNION WITHIN THE MEANING OF THE ACT, THE AGREEMENTS MADE BETWEEN IT AND THE RESPONDENT ARE NOT COLLECTIVE AGREEMENTS. THE INTERVENER IS NOT ENTITLED TO APPEAR ON THE BALLOT AND THE INTERVENTION IS ACCORDINGLY DISMISSED.

19. WE WOULD ADD THAT THERE IS NO EVIDENCE TO SUPPORT THE APPLICANT'S ALLEGATION OF IMPROPER INFLUENCE OR INTERFERENCE BY THE RESPONDENT WITH RESPECT TO THE INTERVENER.

20. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT BURLINGTON, SAVE AND EXCEPT ASSISTANT SUPERVISORS, PERSONS ABOVE THE RANK OF ASSISTANT SUPERVISOR,

OFFICE AND CLERICAL STAFF, SALES STAFF, TECHNICAL STAFF, QUALITY CONTROL STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

21. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN THIRTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON NOVEMBER 28, 1973, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

22. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

23. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BE REPRESENTED BY THE APPLICANT IN THEIR EMPLOYMENT RELATIONS WITH THE RESPONDENT.

24. THE MATTER IS REFERRED TO THE REGISTRAR.

DECISION OF BOARD MEMBER J. E. C. ROBINSON, Q.C.: JANUARY 14, 1974.

I DISSENT.

I HAVE HAD AN OPPORTUNITY OF READING THE DECISION OF THE MAJORITY BUT REGRET THAT I AM UNABLE TO AGREE WITH ITS FINDING WITH REGARD TO THE STATUS OF THE INTERVENER, TRIDON EMPLOYEES ASSOCIATION.

IT WOULD BE MY OPINION THAT TRIDON EMPLOYEES ASSOCIATION IS INDEED A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

SECTION 1(1)(N) OF THE ACT DEFINES A TRADE UNION AS FOLLOWS:

"TRADE UNION" MEANS AN ORGANIZATION OF EMPLOYEES FORMED FOR PURPOSES THAT INCLUDE THE REGULATION OF RELATIONS BETWEEN EMPLOYEES AND EMPLOYERS AND INCLUDES A PROVINCIAL, NATIONAL OR INTERNATIONAL TRADE UNION AND A CERTIFIED COUNCIL OF TRADE UNIONS.

THE ASSOCIATION OF EMPLOYEES OF THE RESPONDENT WAS INITIATED IN 1961 UNDER THE NAME OF HAMILTON CLAMP & STAMPINGS LTD. EMPLOYEES ASSOCIATION. THE RESPONDENT'S NAME WAS LATER CHANGED TO TRIDON LIMITED, AND THE NAME OF THE ASSOCIATION WAS CHANGED TO TRIDON EMPLOYEES ASSOCIATION.

THE INTERVENER FILED WITH THE BOARD THE CONSTITUTION OF THE ASSOCIATION AND EVIDENCE WAS ADDUCED THAT SUCH CONSTITUTION WAS ADOPTED BY THE EMPLOYEES OF THE COMPANY IN 1961.

THE CONSTITUTION OF THE ASSOCIATION, INTER ALIA, STATES:

2. THE PURPOSE AND OBJECTS OF THE ASSOCIATION SHALL BE THE FOLLOWING:

- (A) BY UNITED EFFORT TO PROMOTE THE WELFARE OF THE MEMBERS.
- (B) TO BARGAIN COLLECTIVELY WITH THE EMPLOYER RESPECTING ALL MATTERS EFFECTING TERMS OF EMPLOYMENT.

IT HAS HELD FREELY CONDUCTED ELECTIONS OF ITS REPRESENTATIVES. IT HAS NEGOTIATED A SERIES OF AGREEMENTS WITH THE COMPANY FOR A PERIOD OF APPROXIMATELY TEN YEARS, ALL OF WHICH AGREEMENTS CONTAIN ALL OF THE CLAUSES REQUIRED TO BE IN A COLLECTION AGREEMENT. IN MY OPINION, AND I WOULD SO FIND, SUCH AGREEMENTS WERE COLLECTIVE AGREEMENTS. THESE AGREEMENTS HAVE BEEN REFERRED TO THE EMPLOYEES AND HAVE BEEN APPROVED BY A MAJORITY OF SUCH EMPLOYEES. THE ELECTED REPRESENTATIVES OF THE EMPLOYEES HAVE REGULARLY MET ONCE A MONTH TO DISCUSS PROBLEMS IN THE PLANT AND THE REQUESTS FROM EMPLOYEES. THE ASSOCIATION HAS PROCESSED GRIEVANCES RESULTING IN SOME CASES IN THE REPRIMANDING AND DISCHARGE OF MANAGEMENT PERSONNEL. IT HAS GRIEVED THE DISCHARGE OF AN EMPLOYEE SUCCESSFULLY, RESULTING IN THE REINSTATEMENT OF SUCH EMPLOYEE. IT HAS GRIEVED PROMOTIONS AND SUCCEEDED IN SUCH GRIEVANCES. THAT ITS SUCCESS HAS NOT TAKEN THE RIGID, FORMALISTIC APPROACH WHICH IS EXHIBITED BY ESTABLISHED TRADE UNIONS, DOES NOT DETRACT FROM THE DEGREE OF SUCCESS EXHIBITED BY THIS ASSOCIATION. SURELY THE FACT THAT THE ASSOCIATION HAS UNDERTAKEN ITS PROBLEMS WITH A CERTAIN DEGREE OF INFORMALITY, SHOULD NOT DETRACT FROM ITS EFFECTIVENESS.

IN PARAGRAPHS 8 AND 9 OF THE MAJORITY AWARD, THE MAJORITY OF THE BOARD WOULD SEEM TO BE CONCERNED WITH THE ASPECT OF THE INTERNAL ORGANIZATION OF THE ASSOCIATION. IN MY RESPECTFUL OPINION, THE BOARD HAS HERETOFORE DEALT WITH SUCH PROBLEMS.

IN THE GOLD CREST PRODUCTS LIMITED CASE, [1973] OLRB REP. 436 AT 437, THE BOARD IN DEALING WITH THE QUESTION OF THE STATUS OF A TRADE UNION STATED:

THE BOARD IS PRIMARILY CONCERNED WITH THE CONSTITUTION AS A SOURCE OF EVIDENCE OF THE EXISTENCE OF A VIABLE ORGANIZATION AND OF EVIDENCE OF THE PURPOSE AND INTENT OF THE ORGANIZATION CONCERNED SO THAT THE BOARD MAY BE ABLE TO ANSWER THE QUESTION "IS THE APPLICANT A TRADE UNION AS DEFINED BY THE ACT?" (RE C.S.A.O. NATIONAL (INC) AND OAKVILLE TRAFALGAR MEMORIAL HOSPITAL ASSOCIATION, 1972 O.R. VOL. 2, 498). INQUIRIES MADE AS TO THE ELECTION OF OFFICERS ARE MADE WITH A VIEW ONLY TO AIDING IN THE DECISION AS TO WHETHER THE ORGANIZATION IS VIABLE. IN THE PRESENT CASE, THERE IS AN ARGUABLE POINT AS TO WHETHER THE APPOINTMENT OF THE TEMPORARY COMMITTEE LIES WITHIN THE CONSTITUTIONAL POWERS OF WHAT MUST BE SAID TO BE A GENERAL MEETING OF THE MEMBERSHIP. IT IS QUITE CLEAR, HOWEVER, THAT THE TEMPORARY COMMITTEE IS ACTIVELY ENGAGED IN THE ACTIVITIES OF THE ORGANIZATION CARRIED ON TO DATE. THE MATTER OF THE CONSTITUTIONALITY OF ITS APPOINTMENT AND ACTIONS IS ONE OF INTERNAL ORGANIZATION OF CONCERN TO THE MEMBERSHIP, NONE OF WHOM, INsofar AS THE BOARD WAS ADVISED, HAVE CHALLENGED THE PROPRIETY OF THE ACTION.

IT IS INTERESTING TO NOTE THAT IN THE OAKVILLE TRAFALGAR MEMORIAL HOSPITAL ASSOCIATION CASE, SUPRA, THE COURT DISAGREED WITH THE BOARD IN ITS DECISION THAT THE C.S.A.O. NATIONAL (INC) LACKED STATUS.

INDEED, THE BOARD, IN ITS JURISPRUDENCE, HAS BEEN RELUCTANT TO SET ASIDE WHAT APPEARS TO BE A HARMONIOUS RELATIONSHIP BETWEEN A PURPORTED TRADE UNION AND AN EMPLOYER WHERE SUCH RELATIONSHIP HAS EXISTED FOR A PERIOD OF TIME EXCEEDING ONE YEAR.

IN THE CANADIAN UNION OF INDUSTRIAL WORKERS (APPLICANT) V. GILBARCO EMPLOYEES' UNION (RESPONDENT) V. GILBARCO CANADA LTD. (INTERVENER) CASE, [1971] OLRB REP. 155 AT 160, THE BOARD STATED:

NOTWITHSTANDING OUR FINDING THAT THE GILBARCO EMPLOYEES' UNION AT BROCKVILLE IS NOT A CONTINUATION OF THE FORMER ORGANIZATION, IT APPEARS TO BE A TRADE UNION. IT IS AN ORGANIZATION FORMED FOR THE PURPOSE OF REGULATING RELATIONS BETWEEN AN EMPLOYER AND EMPLOYEE. IF IT HAD APPLIED TO BE CERTIFIED AND WAS REQUIRED TO PROVE ITS STATUS THERE WERE CERTAIN DEFICIENCIES DURING ITS FORMATIVE STAGE THAT MIGHT HAVE PRECLUDED THIS BOARD FROM GRANTING IT STATUS. HOWEVER, WE ARE SATISFIED THAT SUBSEQUENT EVENTS AND ACTS INCLUDING THE PARTICIPATION BY THE EMPLOYEES IN RATIFYING THE NEGOTIATIONS WITH THE COMPANY WERE SUFFICIENT TO CURE ANY IRREGULARITIES IN THE STATUS

OF THE GILBARCO EMPLOYEES' UNION AT BROCKVILLE. WE THEREFORE FIND THAT THE GILBARCO EMPLOYEES' UNION AT BROCKVILLE IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(G) OF THE LABOUR RELATIONS ACT.

FURTHER IN THE BOARD OF EDUCATION FOR THE CITY OF TORONTO CASE, [1970] OLRB REP. (SEPTEMBER) 708 AT 715, THE BOARD STATED:

OF COURSE, THE BOARD IS HESITANT IN THE INTERESTS OF INDUSTRIAL PEACE TO SET ASIDE A COLLECTIVE BARGAINING RELATIONSHIP WHERE ONE HAS EXISTED AND ANOTHER TRADE UNION SEEKS TO DISPLACE A TRADE UNION THAT IS PARTY TO AN EXISTING COLLECTIVE BARGAINING RELATIONSHIP ...

IN ADDITION, IN THE PETERBOROUGH COUNTY BOARD OF EDUCATION CASE, [1969] OLRB REP. (AUGUST) 636 AT 637, THE BOARD STATED:

WHILE THE CANADIAN UNION OF PUBLIC EMPLOYEES CHALLENGED THE STATUS OF THE PETERBOROUGH COUNTY BOARD OF EDUCATION CARETAKERS AND MAINTENANCE ASSOCIATION AS A TRADE UNION, NO EVIDENCE WAS ADDUCED IN SUPPORT OF THE CHALLENGE. IT IS THE BOARD'S POLICY TO RECOGNIZE AN ORGANIZATION AS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) [NOW SECTION 1(1)(N)] OF THE LABOUR RELATIONS ACT IF THAT ORGANIZATION HAS BEEN PARTY TO A COLLECTIVE AGREEMENT WHICH HAS BEEN IN EXISTENCE FOR MORE THAN ONE YEAR SUBJECT TO REQUIRING SUCH ORGANIZATION TO FILE A COPY OF ITS CONSTITUTION. THE BOARD IN SUCH INSTANCE DOES NOT REQUIRE SUCH ORGANIZATION TO FORMALLY PROVE ITS STATUS AS A TRADE UNION. SOME OF THE REASONS FOR THIS POLICY ARE THAT IT OFTEN HAPPENS THAT THE ORGANIZATION HAS BEEN IN EXISTENCE FOR MANY YEARS AND THERE IS NO ONE AVAILABLE WHO WAS IN ATTENDANCE AT THE MEETINGS AT WHICH THE ORGANIZATION CAME INTO EXISTENCE AND ITS CONSTITUTION WAS ADOPTED. IN ADDITION, THE BOARD IS HESITANT TO TAKE ANY ACTION WHICH WOULD TEND TO SET ASIDE AN ESTABLISHED BARGAINING RELATIONSHIP WHICH HAS BEEN IN EXISTENCE FOR A SUBSTANTIAL PERIOD OF TIME. ACCORDINGLY, ON THE FACTS OF THIS CASE, SINCE WE HAVE FOUND THAT THE PETERBOROUGH COUNTY BOARD OF EDUCATION CARETAKERS AND MAINTENANCE ASSOCIATION IS THE SAME ENTITY AS THE PETERBOROUGH BOARD OF EDUCATION CARETAKERS AND MAINTENANCE ASSOCIATION AND SINCE THIS ASSOCIATION HAD AN ESTABLISHED BARGAINING RELATIONSHIP WITH SUCCESSIVE COLLECTIVE

AGREEMENTS SINCE 1952 WITH THE CITY OF PETERBOROUGH BOARD OF EDUCATION, ONE OF THE PREDECESSOR BOARDS OF THE RESPONDENT IN THIS CASE, AND SINCE THE ASSOCIATION HAS FILED WITH THE BOARD A COPY OF ITS CONSTITUTION WHICH EVIDENCE THE FACT THAT IT IS A VIABLE ENTITY, AND IN THE ABSENCE OF EVIDENCE IN SUPPORT OF THE CHALLENGE TO ITS STATUS, THE BOARD ACCORDINGLY FINDS THAT THE PETERBOROUGH COUNTY BOARD OF EDUCATION CARETAKERS AND MAINTENANCE ASSOCIATION IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) [NOW SECTION 1(1)(N)] OF THE LABOUR RELATIONS ACT.

IN CONCLUSION, THEREFORE, WHILE THE MAJORITY OF THE BOARD MAY SEEK SOLACE IN ITS DECISION WITHIN THE REALM OF A LEGALISTIC APPROACH TO ITS FINDINGS, I AM COMFORTED BY THE FACT, IN MY DECISION, THAT THE ASSOCIATION HAS BEEN AN EFFECTIVE AND VIABLE ORGANIZATION WHICH COMPLIES COMPLETELY IN MY OPINION WITH THE PROVISIONS OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

IN MY OPINION, THEREFORE, THE TRIDON EMPLOYEES ASSOCIATION ENJOYS THE STATUS OF A TRADE UNION AND SHOULD BE PLACED UPON THE BALLOT SO THAT EMPLOYEES MAY EXPRESS THEIR CHOICE BETWEEN THAT UNION AND THE APPLICANT.

I WOULD SO FIND.

4868-73-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. CANADIAN MECHANICAL HANDLING SYSTEMS LIMITED (RESPONDENT) V. HOURLY EMPLOYEE RELATIONS COMMITTEE (HERC) (INTERVENER).

RE: ACCO/ (AMERICAN CHAIN & CABLE COMPANY, INC.)

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: H. CARL ANDERSON AND BRUCE LEE FOR THE APPLICANT; D. CHURCHILL-SMITH, IAN DUKE AND EDWARD GLASS FOR THE RESPONDENT; G. WILLIAMS AND L. LEVESQUE FOR THE INTERVENER.

DECISION OF THE BOARD: JANUARY 16, 1974.

1. THE NAME "ACCO/ (AMERICAN CHAIN & CABLE COMPANY, INC., CANADIAN MECHANICAL HANDLING SYSTEMS LTD." APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "CANADIAN MECHANICAL HANDLING SYSTEMS LIMITED".

2. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

3. THIS IS AN APPLICATION FOR CERTIFICATION IN WHICH THE RESPONDENT TAKES THE POSITION THAT THERE IS A COLLECTIVE AGREEMENT IN FORCE BETWEEN THE RESPONDENT AND THE INTERVENER WHICH RENDERS THE APPLICATION UNTIMELY.

4. THE INTERVENER ADVISED THE BOARD THAT IT WAS NOT ITS INTENTION TO INTERVENE OR CONTEST THE APPLICATION.

5. THERE WAS FILED WITH THE BOARD A DOCUMENT WHICH PURPORTED TO BE THE CONSTITUTION OF THE INTERVENER. THE DOCUMENT IS ENTITLED "CONSTITUTION AND PROCEDURE OF THE HOURLY EMPLOYEE RELATIONS COMMITTEE PLAN", HEREINAFTER REFERRED TO AS THE "PLAN".

6. THE PLAN WHICH FORMS THE FOUNDATION UPON WHICH THE INTERVENER WAS BUILT WAS DRAFTED BY THE MANAGEMENT OF THE RESPONDENT AND SIGNED BY ITS OFFICERS AS WELL AS BY EMPLOYEES ON BEHALF OF THE COMMITTEE.

7. THE PLAN PROVIDES FOR ITS AMENDMENT OR REVISION BUT IT ALSO PROVIDES THAT ANY SUCH CHANGE MUST BE AGREED TO BY THE MANAGEMENT. FURTHERMORE, THE PLAN WHICH, AS ALREADY NOTED, PURPORTS TO BE THE CONSTITUTION OF THE INTERVENER MAY BE TERMINATED UPON ONE MONTH'S NOTICE BY THE MANAGEMENT.

8. SECTION 40(A) OF THE LABOUR RELATIONS ACT PROVIDES:

40. AN AGREEMENT BETWEEN AN EMPLOYER OR AN EMPLOYERS' ORGANIZATION AND A TRADE UNION SHALL BE DEEMED NOT TO BE A COLLECTIVE AGREEMENT FOR THE PURPOSES OF THIS ACT,

(A) IF AN EMPLOYER OR AN EMPLOYERS' ORGANIZATION PARTICIPATED IN THE FORMATION OR ADMINISTRATION OF THE TRADE UNION OR IF AN EMPLOYER OR AN EMPLOYERS' ORGANIZATION CONTRIBUTED FINANCIAL OR OTHER SUPPORT TO THE TRADE UNION; OR

9. IT IS CLEAR FROM THE FOREGOING FACTS THAT THE AGREEMENT IN QUESTION, VIEWED IN LIGHT OF THE PROVISIONS OF SECTION 40(A), CANNOT BE DEEMED TO BE A COLLECTIVE AGREEMENT. THE AGREEMENT BETWEEN THE INTERVENER AND THE RESPONDENT IS THEREFORE NOT A BAR TO THIS APPLICATION.

10. FURTHERMORE, SECTION 12 OF THE ACT STATES:

THE BOARD SHALL NOT CERTIFY A TRADE UNION IF ANY EMPLOYER OR ANY EMPLOYERS' ORGANIZATION HAS PARTICIPATED IN ITS FORMATION OR ADMINISTRATION OR HAS CONTRIBUTED FINANCIAL OR OTHER SUPPORT TO IT OR IF IT DISCRIMINATES AGAINST ANY PERSON BECAUSE OF HIS RACE, CREED, COLOUR, NATIONALITY, ANCESTRY OR PLACE OF ORIGIN.

11. THEREFORE, EVEN IF IT WERE TO BE ASSUMED, IN THE FACE OF THE EVIDENCE, THAT THE INTERVENER IS A TRADE UNION, THE PARTICIPATION OF THE RESPONDENT EMPLOYER IN ITS FORMATION RENDERS IT AN ORGANIZATION WHICH THE BOARD CANNOT CERTIFY BY VIRTUE OF THE PROVISIONS OF SECTION 12.

12. THE BOARD ACCORDINGLY IS NOT ABLE TO ORDER A TWO-WAY REPRESENTATION VOTE AFFORDING TO THE EMPLOYEES OF THE RESPONDENT AN OPPORTUNITY TO EXPRESS THEIR CHOICE AS BETWEEN THE INTERVENER AND THE APPLICANT, FOR BY SO DOING, THE BOARD, IN EFFECT, WOULD BE CONFERRING UPON THE INTERVENER THE STATUS OF A CERTIFIABLE ORGANIZATION (SEE FEDERAL PACKAGING AND PARTITION COMPANY LIMITED CASE, [1972] OLRB REP. (APRIL) 316.

. . .

15. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

4854-73-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL 647 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. CANADIAN FOOD PRODUCTS SALES LIMITED (RESPONDENT).

BEFORE: D. H. KATES, VICE-CHAIRMAN, AND BOARD MEMBERS H. J. F. ADE AND E. BOYER.

APPEARANCES AT THE HEARING: I. J. THOMSON AND G. HARRISON FOR THE APPLICANT; M. G. HORAN AND T. MICHAEL FOR THE RESPONDENT.

DECISION OF THE BOARD: JANUARY 16, 1974.

1. THIS IS AN APPLICATION FOR CERTIFICATION FOR A GROUP OF TRUCK DRIVERS EMPLOYED BY THE RESPONDENT COMPANY.

2. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

3. INITIALLY IT APPEARED TO THE BOARD AT THE HEARING THAT THE PARTIES WERE IN AGREEMENT ON THE DESCRIPTION AND COMPOSITION OF THE UNIT OF EMPLOYEES APPROPRIATE FOR COLLECTIVE BARGAINING.

4. THE RESPONDENT FILED ALONG WITH ITS REPLY A SCHEDULE "A" INDICATING FIVE PERSONS TO BE EMPLOYEES IN THE PROPOSED UNIT DESCRIBED IN THE APPLICANT'S APPLICATION FOR CERTIFICATION. THE APPLICANT CHALLENGED THE ACCURACY OF THE RESPONDENT'S LIST. UPON ENTERTAINING THE REPRESENTATIONS OF THE PARTIES ON THE ISSUE OF THE COUNT THE BOARD SOON DISCERNED THAT THE PARTIES WERE NOT AD IDEM ON THE UNDERLYING BASIS OF THEIR AGREEMENT.

5. THE RESPONDENT IS ENGAGED IN SEVERAL AREAS THROUGHOUT THE PROVINCE IN THE PROCESSING AND DELIVERY OF BAKED GOODS. A SEGMENT OF THE RESPONDENT'S UNDERTAKING REQUIRES THE DELIVERY BY TRUCK TO POINTS IN KINGSTON AND OTTAWA OF BAKED GOODS PROCESSED IN METROPOLITAN TORONTO. TRUCK DRIVERS ARE DISPATCHED TO KINGSTON WHERE THE GOODS ARE EITHER DELIVERED TO OUTLETS THEREIN OR DEPOSITED FOR TRANSPORT BY TRUCK DRIVERS BASED IN KINGSTON TO OUTLETS IN THE OTTAWA AREA. UPON THE DISCHARGE OF THEIR RESPONSIBILITIES THE TRUCK DRIVERS RETURN TO THEIR BASE POINTS IN TORONTO AND KINGSTON RESPECTIVELY.

6. THE APPLICANT ASSERTS THAT ONLY TWO EMPLOYEES ARE AFFECTED BY THIS APPLICATION. THAT IS TO SAY ONLY THOSE TRUCK DRIVERS ON THE KINGSTON TO OTTAWA RUN ARE SOUGHT TO BE REPRESENTED HEREIN FOR COLLECTIVE BARGAINING PURPOSES. IT IS ALSO ASSERTED THAT THE THREE EMPLOYEES WHOM THE RESPONDENT CLAIMS SHOULD BE INCLUDED IN THE UNIT ARE ALREADY REPRESENTED BY THE APPLICANT BY VIRTUE OF A COLLECTIVE AGREEMENT ENTERED INTO WITH THE RESPONDENT.

7. ON AGREEMENT A DULY EXECUTED COLLECTIVE AGREEMENT BETWEEN THE PARTIES HEREIN AND DATED APRIL 5, 1973 WAS FILED WITH THE BOARD. THE RECOGNITION CLAUSE OF THE SAID AGREEMENT READS AS FOLLOWS:

ARTICLE I - RECOGNITION

1.01 A) THE COMPANY RECOGNIZES THE UNION AS THE SOLE COLLECTIVE BARGAINING AGENT FOR ALL EMPLOYEES ENGAGED AS TRUCK DRIVERS WORKING IN OR OUT OF METROPOLITAN TORONTO, ONTARIO SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMEN, GARAGE MECHANICS, OFFICE AND SALE STAFF, DRIVER SALESMEN, AND PERSONS EMPLOYED FOR TWENTY (20) HOURS OR LESS PER WEEK.

(EMPHASIS ADDED)

8. ARTICLE 3.01 ALSO CONTAINS A UNION SECURITY CLAUSE PROVIDING FOR A WEEKLY COMPULSORY CHECK-OFF OF UNION DUES, INITIATION FEES AND OTHER ASSESSMENTS FROM EMPLOYEES' PAY CHEQUES.

9. THE BOARD RECEIVED IN EVIDENCE ON AGREEMENT OF THE PARTIES A PAYROLL DEDUCTION LIST FROM DRIVERS WAGES REGARDING UNION DUES FOR THE MONTH OF DECEMBER 1973. APPEARING ON THE SAID LIST WERE THE NAMES OF THE THREE DRIVERS WHOM THE RESPONDENT CLAIMS ARE MORE APPROPRIATELY INCLUDED IN THE UNIT PROPOSED BY THE APPLICANT.

10. THIS BOARD IS SATISFIED ON THE EVIDENCE ADDUCED THAT THE THREE PERSONS LISTED BY THE RESPONDENT ON SCHEDULE "A" ARE ENGAGED AS TRUCK DRIVERS OPERATING OUT OF METROPOLITAN TORONTO AND ARE COVERED BY THE COLLECTIVE AGREEMENT DESCRIBED IN PARAGRAPHS 7 AND 8 HEREIN. HENCE

THEY ARE NOT EMPLOYEES INCLUDED IN THE BARGAINING UNIT OF EMPLOYEES FOUND TO BE APPROPRIATE FOR PURPOSES OF THE INSTANT APPLICATION.

11. BASED ON THE FOREGOING FINDING, THE BOARD FINDS THAT THE APPOINTMENT OF AN EXAMINER IN THE CIRCUMSTANCES WOULD SERVE NO USEFUL PURPOSE AND THEREFORE DENIES THE RESPONDENT'S REQUEST FOR AN EXAMINER'S INQUIRY.

12. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT ENGAGED AS TRUCK DRIVERS WORKING AT KINGSTON, ONTARIO SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

13. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN SIXTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON DECEMBER 7, 1973, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

14. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

4944-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 1036
(APPLICANT) v. C. A. PITTS ENGINEERING CONSTRUCTION LTD. (RESPONDENT).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS H. J. F. ADE
AND E. BOYER.

DECISION OF THE BOARD: JANUARY 17, 1974.

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6. THE RESPONDENT HAS REQUESTED A HEARING OF THIS APPLICATION AND IN SUPPORT OF THIS REQUEST HAS STATED:

"AS A RESULT OF VOLUNTARY NEGOTIATIONS AN OFFER WAS SUBMITTED TO THE UNION FOR SIGNATURE, COPY ATTACHED. THESE NEGOTIATIONS ARE STILL CONTINUING AND WERE VOLUNTARILY ENTERED INTO BY THE COMPANY WITH THE CLEAR UNDERSTANDING THAT THE SCOPE OF THE AGREEMENT WOULD BE LIMITED TO THE PROJECT. THE COMPANY IS CURRENTLY REPRESENTED IN PROVINCIAL NEGOTIATIONS BY A COMMITTEE REPRESENTING CERTAIN MEMBERS OF THE ONTARIO ROAD BUILDERS ASSOCIATION, THESE PROVINCIAL NEGOTIATIONS ARE BEING CONDUCTED WITH A PROVINCIAL COMMITTEE OF LABOURERS UNION WHO PROPORT (SIC) TO REPRESENT LOCAL 1036. WE SUBMIT THAT LOCAL

1036 IS USING THE FACILITIES OF THE LABOUR RELATIONS ACT IN ORDER TO PUT THE COMPANY AT AN ECONOMICAL DISADVANTAGE TO OTHER UNIONIZED CONTRACTORS IN THE INDUSTRY. WE FURTHER SUBMIT THIS DOES NOT TEND TO GOOD LABOUR RELATIONS PRACTICES AND FOR THE REASONS STATED, RESPECTFULLY REQUEST THE BOARD TO RESTRICT THE SCOPE OF ANY CERTIFICATION ISSUED TO THAT OF THE PROJECT AREA ONLY. WE WOULD APPRECIATE THE OPPORTUNITY TO APPEAR BEFORE THE BOARD TO SUPPORT OUR CONTENTION THAT A PROJECT CERTIFICATION WOULD BE PROPER IN THIS CASE."

7. THE RESPONDENT IS SEEKING TO RESTRICT THE BARGAINING UNIT TO THE PROJECT AREA. HOWEVER, BY VIRTUE OF SECTION 108(1) OF THE LABOUR RELATIONS ACT, THE BOARD IS DIRECTED TO DETERMINE THE UNIT OF EMPLOYEES THAT IS APPROPRIATE FOR COLLECTIVE BARGAINING BY REFERENCE TO GEOGRAPHIC AREA AND IS PROHIBITED FROM DEFINING A UNIT WITH RESPECT TO A PARTICULAR PROJECT.

8. THE BOARD HAS CONSIDERED THE REPRESENTATIONS OF THE RESPONDENT. IN APPLICATIONS FOR CERTIFICATION FILED UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE LABOUR RELATIONS ACT, THE BOARD NEED NOT HOLD A HEARING. REFERENCE IS MADE TO SECTION 91(13) OF THE LABOUR RELATIONS ACT. IN OUR VIEW, IT WOULD SERVE NO USEFUL PURPOSE TO HOLD A HEARING OF THIS APPLICATION. ACCORDINGLY, THE REQUEST OF THE RESPONDENT FOR HEARING IS DENIED. IN THE EVENT THE RESPONDENT IS OF THE OPINION THAT THE BOARD HAS ERRED IN A MATERIAL RESPECT, IT IS OPEN TO THE RESPONDENT TO REQUEST THE BOARD TO RECONSIDER ITS DECISION PURSUANT TO THE PROVISIONS OF SECTION 95(1) OF THE LABOUR RELATIONS ACT.

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11. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

4811-73-M: UNITED STEELWORKERS OF AMERICA, LOCAL 958 (APPLICANT) V. CONSOLIDATED CANADIAN FARADAY LIMITED AND DUMBARTON MINES LTD. (RESPONDENTS).

BEFORE: J. D. O'SHEA, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND P. J. O'KEEFE.

DECISION OF THE BOARD: JANUARY 21, 1974.

1. THE RESPONDENTS, BY LETTER DATED JANUARY 11, 1974, HAVE REQUESTED THE BOARD TO RECONSIDER ITS DECISION DATED JANUARY 7, 1974 IN THIS MATTER.

2. HAVING CONSIDERED THE REPRESENTATIONS OF THE RESPONDENTS, WE

ARE OF THE VIEW THAT SECTION 10 OF THE ACT IS APPLICABLE TO EMPLOYEES OF AN EMPLOYER WHO RESIDE ON THE PROPERTY OF THE EMPLOYER IN ONTARIO, OR ON PROPERTY IN ONTARIO TO WHICH THE EMPLOYER HAS THE RIGHT TO CONTROL ACCESS, WITHOUT FURTHER CONDITION OR RESTRICTION. THE EMPLOYEES OF THE EMPLOYER IN THIS CASE ARE, IN OUR VIEW, SUBJECT TO ONTARIO JURISDICTION WHILE RESIDING IN ONTARIO AND THEREFORE THE PROVISIONS OF THE ACT ARE APPLICABLE TO THEM WITH RESPECT TO THEIR RESIDENCE IN ONTARIO.

3. IN THE ABSENCE OF EVIDENCE THAT THE EMPLOYEES WITH WHOM WE ARE HERE CONCERNED ARE SUBJECT TO SOME OTHER JURISDICTION WITH RESPECT TO THEIR RESIDENCE IN ONTARIO, WE HAVE ACCORDINGLY ASSERTED JURISDICTION UNDER SECTION 10 OF THE ACT IN THIS MATTER.

4552-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE TOWNSHIP OF WEST LINCOLN (RESPONDENT).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS D. B. ARCHER AND J.E.C. ROBINSON, Q.C.

DECISION OF VICE-CHAIRMAN FRANK V. BOSCARIOL AND BOARD MEMBER D. B. ARCHER: JANUARY 23, 1974.

1. PURSUANT TO THE DECISION OF THE BOARD IN THIS MATTER DATED NOVEMBER 1, 1973, THE EXAMINER WAS APPOINTED TO, INTER ALIA, INQUIRE INTO THE DUTIES AND RESPONSIBILITIES OF JANE NAPPER CLASSIFIED AS "CONFIDENTIAL CLERK-TYPIST". THIS MEETING CULMINATED IN THE EXAMINER'S REPORT HEREIN DATED DECEMBER 21, 1973.

2. ACCORDINGLY, THE EXAMINER CONVENED A MEETING OF THE PARTIES ON DECEMBER 3, 1973, DURING THE COURSE OF WHICH JANE NAPPER WAS CALLED UPON TO TESTIFY. AFTER QUESTIONS WERE PUT TO HER, BY THE EXAMINER AND THE APPLICANT'S REPRESENTATIVE, THE RESPONDENT'S REPRESENTATIVE BEGAN TO QUESTION THE WITNESS. THE COURSE OF THESE PROCEEDINGS FROM THIS POINT IS REPRODUCED FROM THE SAID EXAMINER'S REPORT AS AMENDED, AND IS AS FOLLOWS:

"13. EXAMINATION OF JANE MARY NAPPER BY THE RESPONDENT

SHE TYPES MINUTES OF COUNCIL MEETINGS AND
THE MINUTES OF THE COMMITTEE OF THE WHOLE.
ASKED IF SHE WOULD HAVE TYPED MINUTES
WHICH CONTAINED MATTERS RELATING TO THE
ROADS DEPARTMENT NEGOTIATIONS, SHE REPLIED SHE
COULDN'T RECALL - NOT SURE.

14. ASKED, IF SHE COULD IDENTIFY TYPED MINUTES
IF THEY WERE SHOWN TO HER, SHE ANSWERED, SHE
MAY.
15. A BINDER WAS THEN PRODUCED - QUESTIONS WERE
ASKED ON ITS CONTENTS BY THE RESPONDENT'S
REPRESENTATIVE AND BY THE EXAMINER. THE APPLICANT'S
REPRESENTATIVE ASKED THE EXAMINER IF THE RESPONDENT
WAS GOING TO PUT THE BINDER IN AS EVIDENCE -
THE RESPONDENT'S REPRESENTATIVE ANSWERED, NO
THEY WOULD LET THE EXAMINER OR THE BOARD EXAMINE
THE CONTENTS.
16. THE APPLICANT'S REPRESENTATIVE REPLIED, I
RESPECTFULLY SUBMIT THAT NEITHER THE BOARD OR
THE EXAMINER HAS THE RIGHT TO ENTERTAIN ANY EVIDENCE
GIVEN BY MRS. NAPPER IN REGARDS TO LETTERS,
REPORTS, MINUTES OR THE BOOK TITLED LABOUR RELATIONS
NEGOTIATING COMMITTEE MEETINGS.
17. EXAMINER'S RULING

THE EXAMINER WOULD DELETE FROM THE REPORT ANY
EVIDENCE GIVEN BY MRS. NAPPER RELATING TO THE
BINDER TITLED "C.U.P.E. AND THE TOWNSHIP LABOUR
RELATIONS NEGOTIATING COMMITTEE MINUTES" EITHER
THROUGH EXAMINATION BY MR. YEO (RESPONDENT'S
REPRESENTATIVE), MR. BLANCHET (APPLICANT'S
REPRESENTATIVE) OR THE EXAMINER."

3. AN ANALOGOUS SITUATION CONFRONTED THE BOARD IN THE INDUSTRIAL AND DOMESTIC PROTECTION COMPANY LIMITED, AND FAIRVIEW CORPORATION LIMITED CASE [1971] OLRB M.R. JULY, P. 415, WHERE DURING THE COURSE OF AN EXAMINER'S HEARING INQUIRING INTO THE DEGREE OF ROTATION EXISTING AMONGST VARIOUS EMPLOYEE-GUARDS, THE RESPONDENT COMPANY TOOK THE POSITION THAT ALTHOUGH IT WAS PREPARED TO SUBMIT TO THE BOARD THE NAMES OF ALL ITS EMPLOYEES AND THE VARIOUS CONTRACTS WHICH IT SERVICED, IT WOULD NOT SUPPLY SUCH INFORMATION TO THE APPLICANT UNION. IN REFUSING TO ENTERTAIN THIS INFORMATION, THE BOARD AT PAGE 417, STATED AS FOLLOWS:

"WE ARE OF THE OPINION THAT ALTHOUGH THERE ARE MATTERS AND INFORMATION WHICH A COMPANY MIGHT PREFER NOT TO DISCLOSE, THAT IT IS UNREALISTIC TO PRESERVE A CLOAK OF SECRECY ABOUT INTERNAL COMPANY INFORMATION IN A PROCEEDING SUCH AS THIS ONE. COMPANIES ARE FORCED TO ENCOUNTER GOVERNMENT AGENCIES, COURTS AND ADMINISTRATIVE TRIBUNALS WHERE MATTERS MUST BE REVEALED AND PARTICULARLY SO WHERE THERE ARE CONTESTED ISSUE. WE ARE OF THE OPINION THAT THE SECRECY WHICH THE COMPANY WISHES TO PRESERVE MUST BE WEIGHED AGAINST THE INTERESTS OF THE TRADE UNION HAVING THE OPPORTUNITY TO ASSESS AND COMMENT ON THE COMPANY'S POSITION. FOR THE BOARD TO MAKE A DECISION BASED ON INFORMATION WHICH IS NOT DISCLOSED TO ONE OF THE PARTIES WOULD BE MANIFESTLY UNFAIR TO THE OTHER PARTY AND IN OUR VIEW WOULD BE A DENIAL OF NATURAL JUSTICE AND ACCORDINGLY WE ARE NOT PREPARED TO ACCEPT THOSE SUBMISSIONS ON THAT POINT. WE CONCLUDE THAT ANY BALANCING OF INTEREST MUST WEIGH IN FAVOUR OF DISCLOSING INFORMATION UPON WHICH THE BOARD MIGHT ACT TO THE OPPOSING PART FOR ITS INVESTIGATION, ASSESSMENT AND REPRESENTATION AND ACCORDINGLY WE DECLINE TO OPEN THE SEALED ENVELOPE TENDERED TO THIS BOARD FOR ITS OWN USE."

4. IN ADDITION, WE FIND THAT THE PROVISIONS OF SECTION 91(12) OF THE ACT RELEVANT IN THESE CIRCUMSTANCES. THIS SUBSECTION PROVIDES THAT:

"THE BOARD SHALL DETERMINE ITS OWN PRACTICE AND PROCEDURE BUT SHALL GIVE FULL OPPORTUNITY TO THE PARTIES TO ANY PROCEEDINGS TO PRESENT THEIR EVIDENCE AND TO MAKE THEIR SUBMISSIONS, AND THE BOARD MAY, SUBJECT TO THE APPROVAL OF THE LIEUTENANT GOVERNOR IN COUNCIL, MAKE RULES GOVERNING ITS PRACTICE AND PROCEDURE AND THE EXERCISE OF ITS POWERS AND PRESCRIBING SUCH FORMS AS ARE CONSIDERED ADVISABLE."

(UNDERLINING ADDED)

5. HAVING THEREFORE CAREFULLY REVIEWED THE WRITTEN REPRESENTATIONS

OF THE PARTIES IN THIS MATTER AND TAKING INTO ACCOUNT THE PRINCIPLES ABOVE CITED TOGETHER WITH THE RELEVANT LEGISLATION, WE ARE NOT PREPARED TO ACCEDE TO THE RESPONDENT'S REQUEST AND THE RULING OF THE EXAMINER IN THIS MATTER IS ACCORDINGLY UPHELD.

6. HAVING CAREFULLY REVIEWED THE TOTALITY OF THE EVIDENCE AS CONTAINED IN THE SAID REPORT OF THE EXAMINER, WE ARE OF THE OPINION THAT JANE NAPPER IN HER CAPACITY AS "CLERK-SECRETARY" IS NOT EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS.

7. THE BOARD FURTHER FINDS THAT ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT SMITHVILLE, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

8. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT ALEX YOUNG, CLASSIFIED BY THE RESPONDENT AS "BUILDING INSPECTOR" IS EXCLUDED FROM THE SAID BARGAINING UNIT ON THE BASIS THAT HE IS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK.

9. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN SIXTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON OCTOBER 16, 1973, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

10. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER J. E. C. ROBINSON, Q.C.: JANUARY 23, 1974.

I DISSENT FROM THE DECISION OF THE MAJORITY IN ITS FINDING THAT JANE NAPPER CLASSIFIED AS "CONFIDENTIAL CLERK-TYPIST" IS NOT EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT.

I HAVE SOME SYMPATHY WITH THE FINDING OF THE MAJORITY WITH RESPECT TO ITS AFFIRMATION OF THE EXAMINER'S RULING WITH RESPECT TO THE REFUSAL BY THE RESPONDENT TO PRODUCE TO THE APPLICANT A BINDER WHICH IT WAS ALLEGED CONTAINED CONFIDENTIAL MATTERS PERTAINING TO LABOUR RELATIONS WITH WHICH, PRESUMABLY, MRS. NAPPER WAS CONVERSANT, AND WHICH DEALT MATTERS INVOLVING THE INCUMBENT UNION AT THE TOWNSHIP.

I AM AWARE THAT HE WHO ASSERTS, MUST PROVE. ON THE OTHER HAND, I AM NOT OF THE OPINION THAT THE RESPONDENT MUST BARE ITS SOUL WITH RESPECT TO CONFIDENTIAL MATTERS IN WHICH MRS. NAPPER WAS INVOLVED.

IN ANY EVENT, I AM OF THE OPINION THAT THERE IS SUFFICIENT EVIDENCE INCLUDED IN THE EXAMINER'S REPORT ON WHICH TO BASE MY FINDING THAT MRS. NAPPER IS EMPLOYED IN A CONFIDENTIAL CAPACITY WITH RESPECT TO LABOUR RELATIONS AND THAT SHE SHOULD BE EXCLUDED FROM THE BARGAINING UNIT.

IT HAS OFTEN BEEN THE PRACTICE OF THE BOARD TO ALLOW AT LEAST ONE SECRETARY TO BE EXCLUDED FROM THE BARGAINING UNIT IN ORDER THAT SHE MIGHT PERFORM THE NECESSARY TASKS WHICH DEVELOP DURING NEGOTIATIONS WITH THE UNION AND WITH RESPECT TO THE DUTIES WHICH ARISE VIS A VIS THE UNION. IT WOULD APPEAR THAT MRS. NAPPER IS THE PERSON WHO EXERCISES SUCH DUTIES.

HAVING REGARD TO THE DECISION OF THE MAJORITY, ONE CAN ONLY HOPE THAT THE TOWNSHIP IS LEFT WITH SOME PERSON WHO EXERCISES SECRETARIAL SKILLS WHO IS ABLE TO PERFORM TASKS OF A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS.

OTHERWISE ONE MIGHT SPECULATE THAT THE MAJORITY ARE EXPECTING THAT THE TOWNSHIP OFFICIALS EXERCISE THIS TASK.

4797-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE COUNTY OF NORFOLK (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: D. H. KATES, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND J. E. C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: W. A. ACTON AND A. BLANCHET FOR THE APPLICANT; D. L. BRISBIN, T. A. CLINE AND W. McDOWELL FOR THE RESPONDENT; D. D. PETERSON FOR THE OBJECTORS.

DECISION OF VICE-CHAIRMAN D. H. KATES AND BOARD MEMBER O. HODGES: JANUARY 24, 1974.

1. THIS IS AN APPLICATION FOR CERTIFICATION FOR A GROUP OF OUTSIDE EMPLOYEES EMPLOYED BY THE RESPONDENT CORPORATION.

. . .

3. THE RESPONDENT IN ITS REPLY PUT IN QUESTION THE RELIABILITY TO BE ATTACHED TO THE EVIDENCE OF REPRESENTATION FILED BY THE APPLICANT IN SUPPORT OF ITS CLAIM FOR BARGAINING RIGHTS. IT IS ALLEGED THAT PERSONS EMPLOYED BY THE RESPONDENT IN A MANAGERIAL CAPACITY LENT SUPPORT TO THE APPLICANT CONTRARY TO S56 OF THE ACT THEREBY PRECLUDING ANY CLAIM TO REPRESENTATIVE RIGHTS FOR THE EMPLOYEES AFFECTED BY THIS APPLICATION.

4. THE BOARD AT THE OUTSET WISHES IT TO BE MADE CLEAR THAT THE ISSUE RAISED BY THE RESPONDENT HEREIN AND REINFORCED BY THE REPRESENTA-

TION OF COUNSEL FOR THE OBJECTING EMPLOYEES IS NOT WHETHER THE IMPUGNED ACTIVITIES AMOUNT TO AN UNFAIR LABOUR PRACTICE UNDER THE ACT; BUT, WHETHER THE EVIDENCE OF REPRESENTATION FILED BY THE APPLICANT IS A TRUE AND VOLUNTARY REFLECTION OF EMPLOYEES' DESIRE TO BE "MEMBERS" WITHIN THE MEANING OF SECTION 7 OF THE ACT. (SEE; KILLARNEY HOTEL (WINDSOR) LIMITED OLRB M.R. JANUARY 1962 361).

5. IT IS THE BOARD'S UNDERSTANDING OF THE REPRESENTATIONS MADE BY COUNSEL THAT THE ACTIVITIES OF THE PERSONS ALLEGED TO BE MANAGERIAL UNDER S1(3)(B) OF THE ACT IN ATTENDING THE APPLICANT'S ORGANIZATIONAL MEETING, IN EXECUTING EVIDENCE OF REPRESENTATION IN VIEW OF OTHER BARGAINING UNIT EMPLOYEES, IN BEING CONSULTED ON THE ADVANTAGES AND DISADVANTAGES OF REPRESENTATION BY THE APPLICANT FOR COLLECTIVE BARGAINING PURPOSES AS WELL AS IN MANIFESTING GENERAL SUPPORT OF THE APPLICANT'S OBJECTIVES SHOULD PERSUADE THE BOARD THAT THE DOCUMENTARY EVIDENCE OF REPRESENTATION IS UNSATISFACTORY. IN SUPPORT OF THIS PROPOSITION IS CITED THE PRINCIPLES OUTLINED IN THE METAL TEXTILE LIMITED CASE OLRB M.R. NOVEMBER 1971 694. IN SHORT, COUNSELS' POSITION STANDS OR FALLS ON THE FUNDAMENTAL QUESTION AS TO WHETHER PERSONS CLASSIFIED BY THE RESPONDENT AS "WORKING FOREMAN" AND "MAINTENANCE FOREMAN" EXERCISE MANAGERIAL FUNCTIONS OR ARE EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF THE ACT. THIS BOARD PROPOSES TO DEAL WITH THE ISSUE ON THE PREMISE PUT BY COUNSEL.

6. THE BASIS OF THE RESPONDENT'S SUBMISSIONS IS THE EVIDENCE ADDUCED THROUGH THE TESTIMONY OF THE FOUR "FOREMEN" SUBPOENAED BY COUNSEL FOR THE RESPONDENT AND THE TESTIMONY OF AN EMPLOYEE ALLEGED TO BE A MEMBER OF THE BARGAINING UNIT PROPOSED TO BE APPROPRIATE BY THE APPLICANT.

7. OF THE FOUR PERSONS ALLEGED TO BE EMPLOYED IN A MANAGERIAL CAPACITY, THREE WERE EMPLOYED AS WORKING FOREMEN IN THE RESPONDENT'S ROADS DEPARTMENT. THE EVIDENCE AS RELATED TO THE BOARD INDICATED THAT WHILE EMPLOYED AS "WORKING FOREMEN" THEIR PRINCIPAL FUNCTION WAS TO SUPERVISE THE WORK PERFORMANCE OF THE CREWS ASSIGNED TO THEM. IN THIS REGARD EACH TESTIFIED THEY WERE CLOTHED WITH EXPLICIT AUTHORITY TO DIRECT THEIR CREW DURING THE COURSE OF BUILDING A ROAD, BRIDGE CULVERT OR WHATEVER THE PARTICULAR PROJECT. AT ALL MATERIAL TIMES HOWEVER THEY WERE UNDER THE GENERAL SUPERVISION OF THE GENERAL FOREMAN AND THE CIVIL ENGINEER EMPLOYED BY THE RESPONDENT CORPORATION. IN THIS REGARD MATTERS PERTAINING TO THE TRADITIONAL INDICIA OF MANAGERIAL FUNCTIONS WERE SUBJECT TO THE IMPRIMATUR OF EITHER OF THE LATTER TWO PERSONS. ALTHOUGH THE EVIDENCE DID INDICATE IN PARTICULAR INSTANCES A MEASURE OF INDIVIDUAL INITIATIVE SUCH AS THE GRANTING OF TIME OFF FOR A MEDICAL APPOINTMENT OR A RECOMMENDATION FOR ADVANCEMENT OF A PARTICULAR EMPLOYEE THIS BOARD IS SATISFIED THAT IN MATTERS OF SUBSTANCE RELATING TO THE WELFARE OF RANK AND FILE EMPLOYEES THESE PERSONS EXERCISED LIMITED AUTHORITY. OF EQUAL IMPORTANCE WAS THE EVIDENCE INDICATING THAT WHEN NOT EMPLOYED AS WORKING FOREMEN (PRESUMABLY DURING THE WINTER SEASON) THESE PERSONS WERE ENGAGED IN BARGAINING UNIT WORK. AND FURTHERMORE IT WAS EXPECTED OF THEM "TO PITCH IN" AND HELP OTHER EMPLOYEES WHEN THE OCCASION AROSE WHILE ENGAGED AS

WORKING FOREMEN, (PRESUMABLY IN THE SUMMER). IT IS NOTED THAT THE INSTANT APPLICATION FOR CERTIFICATION WAS FILED ON NOVEMBER 20, 1973.

8. THIS BOARD HAS OFTEN STATED IN DEALING WITH DISPUTES RELATING TO THE STATUS OF "WORKING FOREMEN" ON CONSTRUCTION PROJECTS (FOR WHICH THE BUILDING OF ROADS, BRIDGES AND CULVERTS ARE CONTEMPLATED UNDER S1(1)(F) OF THE ACT), THAT THE ROOT OF THE DIFFICULTY IN DETERMINING AN ISSUE RAISED UNDER S1(3)(B) IS ATTRIBUTABLE TO THE FACT THAT THE "WORKING FOREMAN" IS INHERENTLY BOUND TO EXERCISE SOME AUTHORITY OVER THE WORKERS UNDER HIS DIRECTION. (SEE SOVEREIGN CONSTRUCTION COMPANY LIMITED OLRB M.R. 1967 24 AT P. 27). BUT THROUGH THE EXPERIENCE OF PRECEDENT THE BOARD HAS DEVELOPED A POSTURE IN DEALING WITH THE WORKING FOREMAN IN THAT IN A GIVEN SITUATION UNLESS THE EVIDENCE IS SUFFICIENTLY COMPELLING TO THE CONTRARY THE BOARD WILL REQUIRE SOMETHING MORE THAN THE MERE SUPERVISION OF WORK GANGS TO BRING INTO PLAY THE OPERATION OF S1(3)(B). IN OTHER WORDS THE DUTIES AND RESPONSIBILITIES MUST IN A MEANINGFUL WAY TRANSCEND THE PARTICULAR SEGMENT OF A PROJECT AND IN A PARTICULAR CIRCUMSTANCE SHOULD RELATE TO THE OVERALL PROGRESS OF THE CONSTRUCTION PROJECT. (SEE VILLAGE CONTRACTORS OLRB M.R. JULY 1966 231 AT P. 237). AS A RESULT, HAVING REGARD TO THE LIMITED AND CIRCUMSCRIBED DUTIES OF THE PERSONS IN ISSUE AND THE NATURE OF THE SUPERVISORY POWERS ASSIGNED WORKING FOREMEN AT THE RELEVANT TIME OF THE INSTANT APPLICATION THIS BOARD IS SATISFIED THAT MESSRS. LLOYD, QUICK AND FERRIS ARE EMPLOYEES OF THE RESPONDENT TO BE INCLUDED IN THE BARGAINING UNIT OF EMPLOYEES. (SEE THE CORPORATION OF THE MUNICIPALITY OF NEEBING OLRB M.R. OCT. 1966 482).

9. A PERSON DESIGNATED AS A "MAINTENANCE FOREMAN" WAS ALSO CALLED BY THE RESPONDENT TO GIVE EVIDENCE. HIS DUTIES ENTAILED THE SUPERVISION OF WORK CREWS ENGAGED IN THE MAINTENANCE OF ROADS, BRIDGES, CULVERTS, ETC. ETC. GENERALLY SPEAKING THESE PROJECTS MAY INVOLVE SUCH SUNDRY THINGS AS THE PATCHING, DITCHING OF ROADS, SNOW PLOUGHING, CULVERT WORK AND THE REMOVAL OF TREES. IN THIS REGARD THE SUPERVISORY POWERS EXERCISED BY THE MAINTENANCE FOREMAN OVER WORK CREWS ARE BASICALLY UNDER THE GENERAL DIRECTION OF THE GENERAL FOREMAN AND THE CIVIL ENGINEER. IN MATTERS OF ANY SUBSTANCE RELATING TO THE EMPLOYMENT STATUS OF EMPLOYEES UNDER HIS SUPERVISION, THE MAINTENANCE FOREMAN WOULD RELY AND IN FACT SEEK THE ADVICE OF THE GENERAL FOREMAN AND THE CIVIL ENGINEER. IN ADDITION, WHEN NOT OTHERWISE OCCUPIED IN SUPERVISORY DUTIES THE MAINTENANCE FOREMAN IS EXPECTED TO HELP OUT EMPLOYEES UNDER HIS DIRECTION. THE PERFORMANCE OF FUNCTIONS RELATING TO REAL MANAGERIAL FUNCTIONS SUCH AS FIRING, PROMOTING, GRANTING TIME OFF OCCUR SO INFREQUENTLY AS NOT TO BE A FACTOR IN MEASURING IN ANY MEANINGFUL WAY THE EXTENT OF AUTHORITY EXERCISED. WITH RESPECT TO HIRING EMPLOYEES THE EVIDENCE WAS CLEAR, THAT THE MAINTENANCE MANAGER MUST FIRST CONSULT AND OBTAIN THE APPROVAL OF THE CITY ENGINEER.

10. THUS INSOFAR AS THE "MAINTENANCE FOREMAN" IS CONCERNED THIS BOARD IS SATISFIED THAT THE FUNCTIONS PERFORMED PARALLEL MORE OR LESS THE DUTIES AND RESPONSIBILITIES OF "A LEAD HAND" AND AS SUCH WOULD

FALL SHORT OF EXERCISING THE TYPE OF AUTHORITY CONSISTENT WITH THE DUTIES AND RESPONSIBILITIES OF A MANAGERIAL PERSON WITHIN THE MEANING OF S1(3)(B) OF THE ACT. (SEE; LADISH Co. of CANADA LIMITED CASE OLRB M.R. DECEMBER 1964 434; SUPERCITY DISCOUNT FOODS LIMITED CASE OLRB M.R. DECEMBER 1965 582; HEATH & SHERWOOD DRILLING LIMITED OLRB M.R. SEPTEMBER 1966 398; THE CORPORATION OF THE COUNTY OF MIDDLESEX OLRB M.R. AUGUST 1972 801). IT THEREFORE FOLLOWS THAT MR. JACK SOVEREIGN IS AN EMPLOYEE IN THE UNIT OF EMPLOYEES PROPOSED BY THE APPLICANT TO BE APPROPRIATE HEREIN.

11. IT FOLLOWS FROM THE FOREGOING FINDINGS OF FACT THAT THE PREMISE UPON WHICH THE RESPONDENT'S SUBMISSIONS FOR DISMISSAL OF THE INSTANT APPLICATION COLLAPSES. AS A RESULT THEREOF THE TESTIMONY ADDUCED THROUGH THE WITNESS MR. FRANK SLOAT IN NO WAY CASTS ANY DOUBT ON THE RELIABILITY OF THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT IN SUPPORT OF ITS CLAIM TO BARGAINING RIGHTS. IT EQUALLY FOLLOWS THAT THE BOARD IS IN NO POSITION HAVING REGARD TO THE EVIDENCE AND THE OPERATION OF SUBSECTION (2) OF SECTION 7 OF THE O.L.R.A. TO EXERCISE ITS DISCRETION TO DIRECT A REPRESENTATION VOTE AS A RESULT OF THE IMPUGNED ACTIVITIES ENGAGED IN BY THE PERSONS DISCUSSED HEREIN. THE SUBMISSION OF COUNSEL FOR THE OBJECTING EMPLOYEES THAT THE BOARD DIRECT SUCH A REPRESENTATION VOTE IN THE CIRCUMSTANCES HEREIN IS DISMISSED.

12. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PERSONS EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

13. FOR PURPOSES OF CLARITY THE BOARD NOTES FOR THE REASONS GIVEN HEREIN THAT THOSE PERSONS CLASSIFIED AS "WORKING FOREMAN" AND "MAINTENANCE FOREMAN" ARE EMPLOYEES FOR PURPOSES OF THE ACT.

14. THE BOARD FURTHER NOTES THAT PERSONS ENGAGED BY VIRTUE OF GOVERNMENT SPONSORED WINTER WORKS PROGRAMMES ARE EMPLOYEES FOR PURPOSES OF THE ACT. (SEE; THE REGIONAL MUNICIPALITY OF NIAGARA, HOMES FOR SENIOR CITIZENS CASE OLRB M.R. MAY 1973 257).

15. THE BOARD FURTHER NOTES THAT PERSONS EMPLOYED AS TECHNICAL STAFF INCLUDING SURVEY CREW, RADIO OPERATORS, STOCKKEEPING STAFF, HOME WORKERS ARE NOT EMPLOYEES INCLUDED IN THE APPROPRIATE UNIT.

16. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN SIXTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON NOVEMBER 30, 1973, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92 (2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

17. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER J. E. C. ROBINSON, Q.C.: JANUARY 24, 1974.

I DISSENT.

I HAVE READ THE DECISION OF THE MAJORITY BUT AM UNABLE TO AGREE WITH ITS CONCLUSIONS.

INITIALLY, I MUST SAY THAT I AM COMPLETELY CONFUSED BY THE FINDING OF THE MAJORITY THAT WITH THE EXCEPTION OF THE MAINTENANCE FOREMAN, ALL OTHER PERSONS CLASSIFIED BY THE MAJORITY AS WORKING FOREMEN WERE ENGAGED IN CONSTRUCTION INDUSTRY PROJECTS. IN MY OPINION, THE EVIDENCE JUST DOES NOT SUPPORT SUCH FINDING.

WITH THE EXCEPTION OF ONE PERSON WHO STATED THAT HE WAS EMPLOYED AS A CONSTRUCTION FOREMAN, AS WELL AS THE PERSON WHO TESTIFIED HE WAS CLASSIFIED AS A MAINTENANCE FOREMAN, THE REMAINING PERSONS IN QUESTION STATED SIMPLY THAT THEY WERE CLASSIFIED AS "FOREMAN".

IT IS TO BE REMEMBERED THAT THIS APPLICATION IS NOT BROUGHT UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE LABOUR RELATIONS ACT.

TO SUGGEST THAT PERSONS CLASSIFIED AS "FOREMAN" WHO HAVE THE POWER TO HIRE AND FIRE, TO DETERMINE AND ALLOCATE OVERTIME, TO GRANT TIME OFF TO EMPLOYEES UNDER THEIR SUPERVISION, WHO ARE SALARIED AS OPPOSED TO THE MEN WORKING UNDER THEM WHO ARE HOURLY RATED, WHO MAKE OUT TIME CARDS FOR THE EMPLOYEES WORKING UNDER THEM AND WEAR DISTINCTIVE HELMETS, WHO HAVE AUTHORITY TO HIRE INDEPENDENT CONTRACTORS AND EQUIPMENT AS NEEDED, WHO SUPERVISE CREWS AMOUNTING TO AS MANY AS 15 PERSONS, WHICH POWERS THESE MEN HAVE, AND TO FIND THAT DESPITE THESE POWERS THEY DO NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT, IS INCONSISTENT WITH THE LEGION OF CASES WHICH HAS ESTABLISHED THE BOARD'S JURISPRUDENCE, ALBEIT A CONVENIENT WAY OF DISPOSING OF THIS MATTER.

I WOULD FIND, WITHOUT HESITATION, THAT SUCH PERSONS EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT.

IT FOLLOWS, THEREFORE, THAT ON MY FINDING, AND ON THE BASIS OF THE BOARD'S JURISPRUDENCE AND THE PRINCIPLES OUTLINED IN METAL TEXTILE LIMITED CASE OLRB M.R. NOVEMBER 1971 694, THIS APPLICATION MUST BE DISMISSED.

IT IS INCUMBENT UPON ME, HOWEVER, TO COMMENT ON MY DECISION, EVEN IF THE PERSONS IN ISSUE WERE FOUND BY THE BOARD TO BE "EMPLOYEES" UNDER THE PROVISIONS OF THE ACT. I HASTEN TO SAY THAT I WOULD FIND THAT ANY EFFORT TO INDUCE OTHER EMPLOYEES TO JOIN THE APPLICANT WAS

NOT DONE INTENTIONALLY BY THE "FOREMAN" UNDER THE GUISE OF EXERTING MANAGERIAL INFLUENCE.

THE FACT REMAINS, HOWEVER, THAT THESE MEN CONSIDERED THEMSELVES TO BE FOREMEN, AND THE EVIDENCE IS CLEAR THAT THEY WERE REGARDED AS SUCH BY THE EMPLOYEES.

INDEED, THE APPLICATION BY THE UNION EXCLUDES PERSONS CLASSIFIED AS "FOREMEN" (PLURAL). THIS PROPOSED BARGAINING UNIT WAS POSTED FOR ALL EMPLOYEES TO SEE. HOW ELSE COULD SUCH OTHER EMPLOYEES REGARD SUCH PERSONS OTHER THAN BEING FOREMEN WHEN THEY REGARDED THEM AS SUCH AND WHEN THE APPLICATION SPECIFICALLY EXCLUDED THEM INASMUCH AS THE EVIDENCE WAS THAT THERE WAS ONLY A SINGLE GENERAL FOREMAN ABOVE SUCH PERSONS? HOW ELSE COULD THE OTHER EMPLOYEES VIEW THESE "FOREMEN" WHEN ONE OF THEM ASKED AT THE UNION MEETING WHETHER THEY COULD JOIN THE UNION OR NOT AND THE UNION REPLIED IT WAS NOT SURE AT THIS TIME? WHAT AFFECT DID THESE MEN HAVE UPON THE VOLUNTARINESS OF THE DESIRES OF THE OTHER EMPLOYEES, WHEN THEY OVERTLY SUPPORTED THE UNION?

I PROFESS TO BE CONCERNED WITH THE VOLUNTARINESS OF THE MEMBERSHIP EVIDENCE.

SECTION 7(2) OF THE LABOUR RELATIONS ACT STATES:-

"IF THE BOARD IS SATISFIED THAT NOT LESS THAN 35 PER CENT AND NOT MORE THAN 65 PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT ARE MEMBERS OF THE TRADE UNION, THE BOARD SHALL, AND IF THE BOARD IS SATISFIED THAT MORE THAN 65 PER CENT OF SUCH EMPLOYEES ARE MEMBERS OF THE TRADE UNION, THE BOARD MAY DIRECT THAT A REPRESENTATION VOTE BE TAKEN."

(EMPHASIS ADDED)

IF THE "FOREMEN" ARE TO BE CONSIDERED AS EMPLOYEES (WITH WHICH I DO NOT AGREE) I WOULD EXERCISE THE DISCRETION AFFORDED BY THE ACT AND ORDER A REPRESENTATION VOTE TO ASCERTAIN THE TRUE DESIRES OF THE EMPLOYEES.

4547-73-R: HOTEL AND RESTAURANT EMPLOYEES UNION, LOCAL 743 (APPLICANT)
V. FOREST PUBLIC HOUSE (RESPONDENT).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFFE AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: H. F. CALEY FOR THE APPLICANT; R. C. FILION, D. I. WAKELY AND M. BERNHOLTZ FOR THE RESPONDENT.

DECISION OF VICE-CHAIRMAN FRANK V. BOSCARIOL AND BOARD MEMBER P. J. O'KEEFFE:
JANUARY 24, 1974.

. . .

2. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

3. IN THIS APPLICATION FOR CERTIFICATION, THE APPLICANT IS SEEKING BARGAINING RIGHTS IN RELATION TO A UNIT OF FOUR FULL-TIME EMPLOYEES EMPLOYED AT THE FOREST PUBLIC HOUSE IN THE CITY OF WINDSOR. THE RESPONDENT, ON THE OTHER HAND, MAINTAINS THAT THE APPROPRIATE UNIT SHOULD CONSIST OF ALL OF ITS FULL-TIME EMPLOYEES IN THE CITY OF WINDSOR EMPLOYED AT THE FOLLOWING SEPARATELY LICENCED ESTABLISHMENTS, VIZ. THE FOREST PUBLIC HOUSE, THE THREE BEARS PUBLIC HOUSE AND THE SEMINOLE TAVERN. IT IS ALSO THE POSITION OF THE RESPONDENT THAT THESE ESTABLISHMENTS ARE IN EFFECT, ASSOCIATED OR RELATED ACTIVITIES OR BUSINESSES WITHIN THE MEANING OF SECTION 1(4) OF THE LABOUR RELATIONS ACT AND THAT ACCORDINGLY THE BOARD SHOULD TREAT THEM AS CONSTITUTING ONE EMPLOYER FOR PURPOSES OF THE ACT.

4. THE EVIDENCE DISCLOSES THAT THE FOREST PUBLIC HOUSE, CENTRALLY SITUATE AT 1073 TECUMSEH ROAD IN THE CITY OF WINDSOR, IS OWNED BY THE CORPORATE ENTITY "SOUTH WESTERN INNS LIMITED". THE DIRECTORS AND OFFICERS OF THIS COMPANY CONSIST OF MESSRS. BERNHOLTZ, ZDZIARSKI AND BRUDNER WHO CARRY ON IN PARTNERSHIP THE PRACTICE OF CHARTERED ACCOUNTANCY AT OFFICES IN THE BARTLET BUILDING SITUATE AT 76 UNIVERSITY AVENUE WEST IN THE CITY OF WINDSOR. ALL SHARES IN SOUTH WESTERN INNS LIMITED ARE HELD BY ANOTHER CORPORATE ENTITY, HOUSEHOLD PRODUCTS COMPANY LIMITED WHOSE OFFICERS AND DIRECTORS ALSO ARE MADE UP OF THE AFOREMENTIONED INDIVIDUAL PARTNERS. THE SHARES OF THIS COMPANY ARE IN TURN HELD EQUALLY BY THREE OTHER CORPORATE ENTITIES; VIZ. PARE-WOOD ENTERPRISES LTD., BELLE POINTE ENTERPRISES LTD. AND BELLEWOOD ENTERPRISES OF WINDSOR LTD. IN OTHER WORDS, THESE COMPANIES EACH HOLD A ONE-THIRD INTEREST IN THE SHARES OF HOUSEHOLD PRODUCTS COMPANY LIMITED WHICH IN TURN HOLDS ONE HUNDRED PER CENT OF THE SHARES OF SOUTH WESTERN INNS LIMITED. THE DIRECTORS AND OFFICERS OF PARE-WOOD ENTERPRISES LTD. CONSIST OF MR. AND MRS. BERNHOLTZ, THOSE OF BELLE-POINTE ENTERPRISES LTD. CONSIST OF MR. AND MRS. ZDZIARSKI AND MR. AND MRS. BRUDNER OCCUPY THESE RESPECTIVE POSITIONS IN RELATION TO BELLEWOOD ENTERPRISES OF WINDSOR LTD. THE THREE BEARS PUBLIC HOUSE IS SITUATE AT 1415 HURON-CHURCH ROAD IN THE WEST-END OF WINDSOR AND IS OWNED BY THE AFOREMENTIONED HOUSEHOLD PRODUCTS COMPANY LIMITED. THE SEMINOLE TAVERN IS SITUATE AT 3983 SEMINOLE STREET IN THE EAST-END OF THE CITY AND IS OWNED BY A CORPORATE PARTNERSHIP CONSISTING OF PARE-WOOD ENTERPRISES LTD., BELLE POINTE ENTERPRISES LTD. AND BELLEWOOD ENTERPRISES OF WINDSOR LTD.

5. ALL OF THE FIVE AFOREMENTIONED COMPANIES AND THE ONE CORPORATE PARTNERSHIP HAVE THE SAME HEAD OFFICE OUT OF WHICH THEIR RESPECTIVE OPERATIONS ARE CONDUCTED WHICH IS THE SAME LOCATION OUT OF WHICH THE AFOREMENTIONED ACCOUNTING FIRM OPERATES ITS PRACTICE, NAMELY AT THE BARTLET BUILDING SITUATE AT 76 UNIVERSITY AVENUE WEST IN THE CITY OF WINDSOR. NONE OF THESE ENTITIES DIRECTLY EMPLOY OFFICE OR CLERICAL STAFF AND

AS IS THE CASE WITH THE THREE LICENCED ESTABLISHMENTS, THESE SERVICES ARE PROVIDED TO THEM BY THE SAID ACCOUNTING FIRM AND CHARGED BACK UPON A FEE BASIS. THESE OFFICE AND CLERICAL SERVICES ARE IN EFFECT PROVIDED BY TWO EMPLOYEE-CLERKS OF THE SAID ACCOUNTING FIRM WHO HANDLE ALL CORRESPONDENCE RELATING TO THE OPERATION OF THE THREE LICENCED ESTABLISHMENTS. NO BOOKS OR RECORDS ARE KEPT AT THE PREMISES OF THE RESPECTIVE ESTABLISHMENTS AS THEY ARE ALL RETAINED AT THE HEAD OFFICE.

6. THE EVIDENCE FURTHER DISCLOSES THAT WHILE EACH OF THE THREE ESTABLISHMENTS HAS A LOCAL MANAGER, THEY ALL REPORT TO MR. BERNHOLTZ WHO IN THIS REGARD ACTS IN THE CAPACITY OF GENERAL MANAGER. MR. BERNHOLTZ'S TESTIMONY IN THIS REGARD IS TO THE EFFECT THAT ALL OF THE BASIC DECISIONS WITH REGARD TO THE OPERATION OF EACH ESTABLISHMENT IS UNDER HIS DIRECT CONTROL AND THAT THE PRIMARY RESPONSIBILITY OF EACH MANAGER IS TO KEEP THE PARTICULAR ESTABLISHMENT IN WORKING ORDER, AS REGARDS TO ITS DAY TO DAY OPERATIONS. IN THIS REGARD, HE STATED THAT HE SETS THE RATES OF WAGES AND FRINGE BENEFITS FOR ALL OF THE EMPLOYEES (THE CHEQUES IN THIS RESPECT BEAR THE NAME OF THE PARTICULAR ESTABLISHMENT OUT OF WHICH THE EMPLOYEE IS RETAINED), HE PERSONALLY SELECTS THE SUPPLIERS, HIS PERSONAL APPROVAL IS REQUIRED FOR MAJOR REPAIRS AND ALSO FOR CAPITAL EXPENDITURES, HE HIRES THE ENTERTAINERS AND SETS THEIR RATES, HE HANDLES ALL ADVERTISING, HE DETERMINES THE PRICE OF LIQUOR AND BEER, HE DEALS WITH ALL OUTSIDE BODIES INCLUDING GOVERNMENT AGENCIES. NONE OF THE LOCAL MANAGERS HAVE AUTHORITY TO SIGN CHEQUES AND THEIR PETTY CASH VOUCHERS MUST BE SUBMITTED TO HIM FOR APPROVAL. ALTHOUGH THE LOCAL MANAGERS HAVE AUTHORITY TO HIRE THEIR OWN STAFF, MR. BERNHOLTZ STATED THAT HE HAS THE RIGHT TO VETO THEIR SELECTIONS AND THAT FURTHER THEY MUST KEEP WITHIN THE NUMBER OF WORKING HOURS AS BUDGETED BY HIMSELF FOR EACH ESTABLISHMENT.

7. THE EVIDENCE AS ADDUCED IN RELATION TO INTERCHANGE OF EMPLOYEES, REVEALS THAT NONE OF THE EMPLOYEES AT THE FOREST PUBLIC HOUSE SUBJECT TO THIS APPLICATION HAS EVER BEEN ASSIGNED TO WORK AT THE THREE BEARS PUBLIC HOUSE OR AT THE SEMINOLE TAVERN. FURTHER, THERE HAS BEEN NO PERMANENT TRANSFERS OF ANY FULL-TIME EMPLOYEES FROM THESE LATTER TWO ESTABLISHMENTS AND ANY TEMPORARY TRANSFERS UPON A FULL-TIME BASIS OF THESE EMPLOYEES TO THE FOREST PUBLIC HOUSE, WE FIND ARE RELATIVELY INSIGNIFICANT. IN THE RESULT, WE ARE SATISFIED HAVING CAREFULLY REVIEWED ALL OF THE EVIDENCE AS TENDERED IN THIS REGARD, THAT THE AMOUNT OF REGULAR INTERCHANGE OF FULL TIME EMPLOYEES AS BETWEEN THE FOREST PUBLIC HOUSE AND THE OTHER TWO ESTABLISHMENTS IS NEGLIGIBLE.

8. AS WAS STATED BY THE BOARD IN THE BOARD OF EDUCATION FOR THE CITY OF TORONTO CASE OLRB M.R. JULY 1970, P. 430 AT PAGE 437:

"...WHERE SECTION 6(1) [I.E. OF THE LABOUR RELATIONS ACT] REFERS TO "THE UNIT OF EMPLOYEES THAT IS APPROPRIATE" IT DOES NOT IMPOSE ANY REQUIREMENT THAT THE BOARD CHOOSE THE MORE OR MOST COMPREHENSIVE UNIT - IT ONLY REQUIRES

THE BOARD TO DETERMINE THE UNIT OF EMPLOYEES THAT IS APPROPRIATE FOR COLLECTIVE BARGAINING HAVING PARTICULAR REGARD TO THE FACTS OF THE IMMEDIATE APPLICATION."

9. THE PROBLEM NOW CONFRONTING US IS ANALOGOUS TO THE SITUATION WHICH THE BOARD FACED IN THE COMMONWEALTH HOLIDAY INNS OF CANADA LIMITED CASE OLRB M.R. OCTOBER, 1970, P. 749 WHERE AT PAGE 753, THE BOARD STATED:

"WE ARE ABLE TO GAIN LITTLE GUIDANCE IN DETERMINING THE APPROPRIATE BARGAINING UNIT FROM OTHER APPLICATIONS FOR CERTIFICATION INVOLVING UNITS OF HOTEL EMPLOYEES. THE REASON FOR THIS IS THAT THESE APPLICATIONS HAVE BEEN FOR A SINGLE HOTEL IN A MUNICIPALITY. MOREOVER, WITH FEW EXCEPTIONS, THE NAMED RESPONDENT IN EARLIER CASES ONLY OWNED ONE HOTEL OR ONLY ONE HOTEL IN THE SAME MUNICIPALITY. IN THE INSTANT CASE, ON THE OTHER HAND, THE RESPONDENT OWNS A CHAIN OF HOTELS EXTENDING ACROSS THE PROVINCE AND THREE OF THEM FALL WITHIN THE BOUNDARIES OF METROPOLITAN TORONTO. WE WOULD MENTION AS WELL THAT THE NATURE AND MANNER IN WHICH RETAIL FOOD STORES AND OTHER SERVICE INDUSTRIES CARRY ON THEIR BUSINESSES, AND ALSO MANUFACTURING OPERATIONS, ARE SUFFICIENTLY DIFFERENT AS TO BE OF LIMITED ASSISTANCE TO THE BOARD."

10. IN ADDITION, THE APPLICANT SUBMITS THAT THE BOARD TAKE HEED OF THE PECULIAR NATURE OF THE HOTEL INDUSTRY AND IN PARTICULAR, THE BOARD'S WELL-DEFINED PRACTICE OF GRANTING CERTIFICATION UPON AN INDIVIDUAL HOTEL BASIS. IT IS FURTHER URGED UPON US THAT IN DETERMINING THE APPROPRIATE BARGAINING UNIT THAT WE BE CAUTIOUS IN NOT IMPEDING THE RIGHT OF SELF-ORGANIZATION AS GUARANTEED IN SECTION 3 OF THE ACT.

11. THE RESPONDENT, IN ADDITION TO ITS ARGUMENT PRESENTED TO US RELATING DIRECTLY TO THE APPROPRIATENESS OF THE BARGAINING UNIT, SUBMITS THAT IN THE CIRCUMSTANCES OF THIS CASE THAT WE MAKE A FINDING THAT THE FOREST PUBLIC HOUSE, THE THREE BEARS PUBLIC HOUSE AND THE SEMINOLE TAVERN ARE ASSOCIATED OR RELATED ACTIVITIES CARRIED ON BY OR THROUGH MORE THAN ONE CORPORATION, INDIVIDUAL FIRM, SYNDICATE OR ASSOCIATION UNDER COMMON DIRECTION OR CONTROL, AND AS SUCH SHOULD THEREFORE BE TREATED BY THE BOARD AS CONSTITUTING ONE EMPLOYER FOR PURPOSES OF THE ACT PURSUANT TO THE PROVISIONS OF SECTION 1(4) OF THE ACT. IN THIS REGARD OUR ATTENTION WAS DRAWN TO THE DECISION OF THE BOARD IN THE INDUSTRIAL-MINE INSTALLATIONS LIMITED CASE [1972] OLRB M.R. 1029 WHERE AT PAGE 1032, ONE OF THE PURPOSES OF SECTION 1(4) IS INDICATED AS FOLLOWS:

".....IN THE CASE WHERE ASSOCIATED OR RELATED

EMPLOYERS JOINED IN A COMMON ENTERPRISE AND USED ONE WORK FORCE, WHICH WAS SHIFTED AND TRANSFERRED FROM TIME TO TIME, THE CERTIFICATION WITH RESPECT TO ONE EMPLOYER ONLY WAS, IN EFFECT, A CERTIFICATION OF A SEGMENT OF THE TOTAL ENTERPRISE, AND COULD SERIOUSLY IMPAIR THE TOTALITY OF THE BUSINESS OPERATIONS BY INHIBITING THE SHIFTING OF EMPLOYEES BETWEEN UNION AND NON-UNION SEGMENTS OF THE ENTERPRISE. IT WAS ALSO POSSIBLE IN SITUATIONS WHERE ASSOCIATED OR RELATED COMPANIES CARRIED ON A SINGLE ENTERPRISE THAT EMPLOYEES OF THE SEPARATE LEGAL ENTITIES COULD BE REPRESENTED BY DIFFERENT TRADE UNIONS SO AS TO CAUSE THE BARGAINING RIGHTS WITHIN THE SINGLE ENTERPRISE TO BE UNDULY FRAGMENTED. AND EXAMPLE OF THE TYPE OF SITUATION WHERE SECTION 1(4) WAS APPLIED IS FOUND IN WALTERS LITHOGRAPHING COMPANY LIMITED, ET AL, [1971] OLRB RE. 406."

IT IS SUBMITTED THAT THESE CONSIDERATIONS SHOULD ALSO BE RELEVANT TO THE ISSUE OF APPROPRIATENESS IN THE INSTANT CASE.

12. THE BOARD HAS CAREFULLY REVIEWED THE MATTERS AS RAISED IN THE RESPECTIVE POSITIONS OF COUNSEL AND IN THE PARTICULAR CIRCUMSTANCES OF THIS CASE, WE ARE MORE FAVOURABLY IMPRESSED WITH THOSE CONSIDERATIONS SUBMITTED TO US ON BEHALF OF THE APPLICANT. HAVING REGARD THEREFORE TO THE PRINCIPLES AS SET OUT IN COMMONWEALTH HOLIDAY INNS OF CANADA LIMITED CASE (SUPRA) AND THE BOARD OF EDUCATION FOR THE CITY OF TORONTO CASE (SUPRA) AND THE CASES REFERRED THEREIN, AND APPLYING SUCH PRINCIPLES TO THE CIRCUMSTANCES OF THE INSTANT APPLICATION, WE FIND THAT THE FULL-TIME EMPLOYEES AT THE FOREST PUBLIC HOUSE CONSTITUTE IN THEMSELVES A VIABLE UNIT FOR THE PURPOSES OF COLLECTIVE BARGAINING.

13. THE BOARD THEREFORE FINDS ALL EMPLOYEES OF THE FOREST PUBLIC HOUSE, LOCATED AT 1073 TECUMSEH ROAD EAST IN THE CITY OF WINDSOR, SAVE AND EXCEPT THE MANAGER, PERSONS ABOVE THE RANK OF MANAGER AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

. . .

15. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER J. E. C. ROBINSON, Q.C.: JANUARY 24, 1974.

I DISSENT.

IT WAS CONCEDED BY THE COUNSEL FOR THE APPLICANT THAT THE FOREST PUBLIC HOUSE, THE THREE BEARS PUBLIC HOUSE AND THE SEMINOLE

TAVERN WERE ASSOCIATED OR RELATED ACTIVITIES OR BUSINESSES CARRIED ON BY OR THROUGH MORE THAN ONE CORPORATION, INDIVIDUAL, FIRM, SYNDICATE OR ASSOCIATION, OR ANY COMBINATION THEREOF, UNDER COMMON CONTROL OR DIRECTION WITHIN THE MEANING OF SECTION 1(4) OF THE LABOUR RELATIONS ACT.

WHAT REMAINS TO BE DETERMINED HOWEVER IS WHETHER THE BOARD SHOULD EXERCISE THE DISCRETION AFFORDED IT BY SUCH SECTION AND TREAT THEM AS ONE EMPLOYER FOR THE PURPOSES OF THE ACT.

WHAT IS TO BE DETERMINED THEREFORE IS WHETHER THE BOARD SHOULD TREAT THE FOREST PUBLIC HOUSE AS AN APPROPRIATE BARGAINING UNIT BY ITSELF.

THE EVIDENCE OF MR. BERNHOLTZ, WITH RESPECT TO HIS ALMOST COMPLETE CONTROL OVER THE DAY TO DAY WORKING OF THE 3 HOUSES HAS BEEN SET OUT IN THE MAJORITY DECISION. I DO NOT INTEND TO REPEAT SUCH STATEMENTS.

I AM, HOWEVER, CONCERNED WITH THE FINDING BY THE MAJORITY OF INSIGNIFICANT INTERCHANGE BETWEEN THE 3 HOUSES. THE FACT IS THAT THERE ARE 5 EXAMPLES OF INTERCHANGE OUT OF A TOTAL OF 14 EMPLOYEES DURING THE PERIOD OF 1973. TO ME, THIS INCIDENCE OF INTERCHANGE IS SIGNIFICANT AND IS ONE OF THE DISTINCTIONS BETWEEN THIS CASE AND THE COMMONWEALTH HOLIDAY INNS OF CANADA LIMITED CASE OLRB M.R. OCTOBER, 1970, P. 749 TO WHICH THE MAJORITY HAS REFERRED.

IN ADDITION, I WOULD ADOPT THE STATEMENT FROM THE INDUSTRIAL-MINE INSTALLATIONS LIMITED CASE [1971] OLRB M.R. 1029 AT PAGE 1032 AS SET OUT IN THE MAJORITY DECISION IN PARAGRAPH 11.

ADDITIONALLY, THE PASSAGE QUOTED BY THE BOARD FROM THE BOARD OF EDUCATION FOR THE CITY OF TORONTO CASE OLRB M.R. JULY 1970 P. 430 AT PAGE 437, WOULD SEEM TO HAVE BEEN EITHER DILUTED OR REVERSED BY THE DECISION OF THE BOARD IN THE MCMASTER UNIVERSITY CASE 1973 OLRB M.R. FEBRUARY P. 102 AT PAGE 104;

".....LIKewise, THE APPROPRIATENESS OF THE BARGAINING UNIT MUST BE DETERMINED FROM THE OBJECTIVE FACTS OF THE CASE RATHER THAN THE EXTENT OF ORGANIZATION OF THE APPLICANT UNION. UNDER SECTION 6(1) OF THE LABOUR RELATIONS ACT THE BOARD IS REQUIRED, IN THE EXERCISE OF ITS JURISDICTION, TO DETERMINE THE UNIT OF EMPLOYEES THAT IS APPROPRIATE FOR COLLECTIVE BARGAINING. IT IS NOTED THAT THE DEFINITE ARTICLE "THE" IS USED RATHER THAN A UNIT OF EMPLOYEES THAT IS APPROPRIATE FOR COLLECTIVE BARGAINING.....

....AGAIN, THE FACT THAT SIMILAR BARGAINING UNITS HAVE BEEN FOUND TO BE APPROPRIATE IN A SPECIFIC CASE WITH OTHER EMPLOYERS IS ALSO NOT DISPOSITIVE OF THE ISSUE. IT MAY WELL BE THAT THE PARTIES IN OTHER CASES HAVE ADJUSTED THEIR AFFAIRS IN ORDER TO GIVE EFFECT TO THE PURPOSES OF THE LABOUR RELATIONS ACT AS SET OUT IN THE PREAMBLE TO THE ACT. IN THE EXERCISE OF ITS JURISDICTION THE BOARD OUGHT TO ATTEMPT TO AVOID CAUSING THE PARTIES AND THE EMPLOYEES CONCERNED TO READJUST THEIR RELATIONSHIP IN A VERY RADICAL WAY IN ORDER TO GIVE EFFECT TO THE BOARD'S DETERMINATION CONCERNING THE APPROPRIATENESS OF A BARGAINING UNIT....

...IN DETERMINING THE APPROPRIATENESS OF THE BARGAINING UNIT, THE BOARD MUST CONSIDER ALL THE FACTS OF EACH CASE IN LIGHT OF THE INTERESTS OF THE UNION, THE EMPLOYER AND ALSO THE EMPLOYEES CONCERNED....

....THE APPLICANT URGED THE BOARD TO GIVE EFFECT TO ITS INTERPRETATION OF SECTION 3 OF THE LABOUR RELATIONS ACT WHICH PROVIDES THAT EVERY PERSON IS FREE TO JOIN A TRADE UNION OF HIS OWN CHOICE AND TO PARTICIPATE IN ITS LAWFUL ACTIVITIES. OUR FINDING THAT THE UNIT PROPOSED BY THE APPLICANT IS INAPPROPRIATE IN NO WAY DETRACTS FROM THE PURPOSE AND INTENT OF SECTION 3 OF THE ACT. ALL OF THE EMPLOYEES OF THE RESPONDENT WHO HAVE JOINED THE APPLICANT UNION CAN CONTINUE MEMBERSHIP IN THE APPLICANT AND PARTICIPATE IN THE APPLICANT'S ACTIVITIES. HOWEVER THAT MAY BE, UNTIL SUCH TIME AS THE APPLICANT ESTABLISHES THAT IT REPRESENTS THE REQUIRED PERCENTAGE OF THE EMPLOYEES IN THE APPROPRIATE BARGAINING UNIT, THE APPLICANT IS NOT ENTITLED TO BE CERTIFIED TO REPRESENT THE EMPLOYEES OF THE RESPONDENT WHO HAVE MEMBERS OF THE APPLICANT. IF THE APPLICANT'S ARGUMENT WAS CARRIED TO ITS LOGICAL CONCLUSION, A TRADE UNION WOULD BE ENTITLED TO REPRESENT, FOR COLLECTIVE BARGAINING PURPOSES, EVERY EMPLOYEE WHO BECAME A MEMBER OF THE TRADE UNION WITHOUT REGARD TO THE APPROPRIATENESS OF THE BARGAINING UNIT. THIS IS NOT THE INTENT OF SECTION 3 OF THE ACT. IN ORDER TO BE CERTIFIED AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES, THE APPLICANT MUST REPRESENT A MAJORITY OF THE EMPLOYEES IN THE APPROPRIATE BARGAINING UNIT IN ACCORDANCE WITH THE PROVISIONS OF SECTION 7 OF THE ACT."

HAVING REGARD TO THE PRINCIPLES GIVEN IN THE McMASTER UNIVERSITY CASE, SUPRA, AND HAVING REGARD TO UNCONTRADICTED EVIDENCE OF MR. BERNHOLTZ, I WOULD EXERCISE MY DISCRETION AND FIND THAT THERE WAS ONE EMPLOYEE FOR THE PURPOSES OF THE ACT. I WOULD FIND ALSO THAT THE APPROPRIATE BARGAINING UNIT WITHIN THE PROVISIONS OF SECTION 6(1) OF THE ACT IS ALL EMPLOYEES OF THE FOREST PUBLIC HOUSE, THE THREE BEARS PUBLIC HOUSE AND THE SEMINOLE TAVERN IN THE CITY OF WINDSOR, SAVE AND EXCEPT MANAGERS, PERSONS ABOVE THE RANK OF MANAGERS, AND EMPLOYEES REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK.

3116-72-R: LOCAL UNION 633 AND LOCAL UNION 175 CANADIAN FOOD AND ALLIED WORKERS CHARTERED BY AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANTS) V. SUNNYBROOK FOOD MARKET (KEELE) LIMITED (RESPONDENT) V. THE GREAT ATLANTIC & PACIFIC COMPANY OF CANADA LIMITED (INTERVENER #1) V. LOCAL 206 NATIONAL COUNCIL OF CANADIAN LABOUR (INTERVENER #2).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND J. E. C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: T. E. ARMSTRONG AND D. SEXTON FOR THE APPLICANT; B. W. BINNING, M. GOODBAUM AND R. BALDWIN FOR THE RESPONDENT; M. G. MITCHNICK FOR INTERVENER #1; C. HOADLEY AND L. J. LABONTE FOR INTERVENER #2.

DECISION OF THE BOARD: JANUARY 24, 1974.

. . .

2. THE APPLICANTS APPLIED TO THE BOARD UNDER SECTION 55 OF THE LABOUR RELATIONS ACT WITH RESPECT TO THE BARGAINING RIGHTS OF THE APPLICANT.

3. THE APPLICANTS ALLEGE THAT A SALE OF A BUSINESS BY OR ON BEHALF OF GREAT ATLANTIC AND PACIFIC CO. OF CANADA LIMITED TO THE RESPONDENT OCCURRED ON OR ABOUT NOVEMBER 1, 1972. THE RESPONDENT AND THE INTERVENERS DENY THAT A SALE HAS OCCURRED WITHIN THE MEANING OF SECTION 55 OF THE LABOUR RELATIONS ACT.

4. THE APPLICANTS SEEK AN AFFIRMATIVE DECLARATION THAT THE SUCCESSOR EMPLOYER WHICH IS THE RESPONDENT, IS BOUND BY THE COLLECTIVE AGREEMENTS BETWEEN THE APPLICANTS AND GREAT ATLANTIC AND PACIFIC CO. OF CANADA LIMITED (HEREINAFTER REFERRED TO AS 'A & P') WITH RESPECT TO A & P'S FORMER STORE AT 26 KENNEDY ROAD NORTH, BRAMPTON (HEREINAFTER CALLED THE "PREMISES").

5. THE RESPONDENT CALLED DOUGLAS W. MORRISON AS A WITNESS. MR. MORRISON INFORMED THE BOARD THAT HE IS A REAL ESTATE OFFICER OF A & P AND WAS RESPONSIBLE FOR CERTAIN OF THE REAL ESTATE AND FIXTURES

OF A & P. THE LEASE UNDER WHICH A & P FORMERLY OPERATED ITS STORE AT THE PREMISES, WAS DATED JANUARY 26, 1962 AND EXTENDED FROM OCTOBER 1, 1962 UNTIL SEPTEMBER 30, 1972 WITH THREE EXTENSION OPTIONS OF FIVE YEARS EACH. THE MONTHLY RENT UNDER THE LEASE WAS \$1,583.33. HE TESTIFIED THAT WHILE THE LEASE IS SILENT ON ASSIGNMENT OF THE LEASE, A & P UNDERSTOOD IT COULD HAVE ASSIGNED THE LEASE IF IT SO DESIRED. HE GAVE EVIDENCE THAT IN A LETTER DATED MARCH 27, 1972, A & P GAVE SIX MONTHS' NOTICE IN WRITING TO THE LESSOR THAT IT WOULD NOT BE EXTENDING THE LEASE. THE WITNESS ALSO INFORMED THE BOARD THAT IT CLOSED THE PREMISES FOR BUSINESS ON SEPTEMBER 16, 1972 AND THAT BY SEPTEMBER 30, 1972, ALL INTEREST OF A & P IN THE PREMISES WAS ENDED.

6. MR. MORRISON TESTIFIED THAT ON SEPTEMBER 7, 1972, HE SENT OUT A LETTER TO MR. MOTTLE GOODBAUM OF THE RESPONDENT INFORMING HIM THAT A & P'S FIXTURES IN THE PREMISES WERE TO BE SOLD ON AN "AS IS AND WHERE IS BASIS". THE WITNESS EXPLAINED THAT UNDER THE LEASE, A & P HAD THE RIGHT TO REMOVE FIXTURES. THESE FIXTURES WERE SOLD TO THE RESPONDENT FOR \$30,000. THE WITNESS INFORMED THE BOARD THAT A & P DID NOT RENEW THE LEASE BECAUSE THE PREMISES AS A UNIT WERE TOO SMALL AND OUTMODDED, WERE A MARGINAL PROFIT OPERATION AT THAT TIME AND A & P WAS NEGOTIATING FOR A REPLACEMENT OUTLET IN BRAMPTON WHICH WOULD PROVIDE 30,000 SQ. FT. OF FLOOR SPACE AS OPPOSED TO THE 12,000 SQ. FT. IN THE PREMISES. HE EXPLAINED THAT A & P DID NOT DEEM IT PRUDENT TO COMMIT ITSELF FOR FIVE YEARS TO AN OBSOLETE UNIT.

7. THE WITNESS GAVE EVIDENCE THAT A & P WAS PROPOSING TO SELL TO THE RESPONDENT ALL EQUIPMENT IN THE PREMISES EXCEPT ANY IDENTIFIABLE SIGNS. ALL OF THE MERCHANDISE WAS TO BE REMOVED BY A & P. THE WITNESS STATED THAT A & P WAS NOT SELLING ANY INTEREST IN THE LEASE TO THE RESPONDENT. MR. MORRISON TESTIFIED THAT IF THE FIXTURES HAD NOT BEEN SOLD TO THE RESPONDENT, THEN, SOME OF THEM WOULD HAVE BEEN DISMANTLED AND SENT TO THE JUNK YARD. HE EXPLAINED THAT WHILE A & P COULD HAVE REMOVED THE COUNTERS, THE PRINCIPLE FIXTURE, NAMELY THE REFRIGERATION UNIT, WOULD HAVE BEEN SENT TO THE JUNK YARD HAD IT NOT BEEN SOLD TO THE RESPONDENT. AT THE TIME A & P CLOSED OUT ITS OPERATIONS AT THE PREMISES, THE THREE FULL-TIME EMPLOYEES THERE WERE GIVEN NEW EMPLOYMENT IN ITS STORES IN THE METROPOLITAN TORONTO AREA. MR. MORRISON TESTIFIED THAT THERE WAS NO INTENT AT ANY TIME BY A & P TO DISPOSE OF ANY GOODWILL ASSOCIATED WITH THE PREMISES TO THE RESPONDENT.

8. UNDER CROSS-EXAMINATION, THE WITNESS AGREED THAT HE HAD NOTHING TO DO WITH THE DECISION NOT TO EXERCISE THE OPTION TO RENEW THE LEASE AND THAT THIS WAS A MANAGEMENT DECISION. HE STATED THAT HIS FIRST CONTACT WITH THE RESPONDENT WAS, AT LEAST, SIX WEEKS PRIOR TO THE CONSUMMATION OF THE DEAL, THAT IS TO SAY, SIX WEEKS PRIOR TO SEPTEMBER 7, 1972. MR. MORRISON TESTIFIED THAT THE NATURE OF THE CONTACT WAS EXPLORATORY AND THAT THE INQUIRY WAS RELATED TO ASKING THE PRICE THAT MIGHT BE ASKED FOR OUR ASSETS. THE WITNESS STATED THAT THE CONTACT WAS WITH MR. GOODBAUM. THE WITNESS INFORMED THE BOARD THAT THERE WAS NO EXCHANGE OF

CORRESPONDENCE REGARDING THE SALE OF ASSETS AND THAT TO THE BEST OF THE WITNESS'S KNOWLEDGE, THERE WAS ONLY ONE LETTER FROM A & P TO THE RESPONDENT IN THIS REGARD. HE INFORMED THE BOARD THAT THE LEASEHOLD IMPROVEMENTS INCLUDED WALL PANELLING, WIRING FOR TIME CLOCKS AND COMPRESSORS AND THAT THESE ITEMS WERE INCLUDED IN THE ASSETS SOLD TO THE RESPONDENT FOR \$30,000. MR. MORRISON EXPLAINED THAT IF THESE ITEMS HAD NOT BEEN SOLD, THEY COULD HAVE BEEN REMOVED. THE WITNESS GAVE EVIDENCE THAT A MEMBER OF A & P'S STAFF WENT OUT WITH MR. GOODBAUM AND DID AN INVENTORY ON THE ASSETS TO BE SOLD TO THE RESPONDENT.

9. IN RE-EXAMINATION, THE WITNESS TESTIFIED THAT HE HAD CONVERSATIONS WITH MR. WEISBERG OF SUNNYBROOK MEAT PACKERS LIMITED ABOUT A WEEK PRIOR TO TALKING TO MR. GOODBAUM. THIS CONVERSATION, MR. MORRISON EXPLAINED, WAS JUST A DISCUSSION AND NO AGREEMENT WAS MADE. HE STATED THAT THE SALE OF THE FIXTURES TO THE RESPONDENT WAS NOT CONSUMMATED UNTIL SEPTEMBER 1972, AND, THAT THE CONVERSATION WITH MR. WEISBERG OCCURRED CONSIDERABLY AFTER THE LETTER DATED MARCH 27, 1972.

10. MR. GOODBAUM WAS ALSO CALLED AS A WITNESS BY THE RESPONDENT. HE GAVE EVIDENCE THAT HE IS THE GENERAL MANAGER, A SHAREHOLDER WITH A ONE EIGHTH INTEREST AND THE DIRECTOR OF THE RESPONDENT. HE ALSO INFORMED THAT BOARD THAT MR. WEISBERG ALSO HAS A ONE EIGHTH INTEREST IN THE RESPONDENT. HE TESTIFIED THAT MR. WEISBERG HAD ASKED THE RESPONDENT IF IT WAS INTERESTED IN THE PREMISES AND THAT MR. WEISBERG WAS INFORMED THAT THE RESPONDENT WAS NOT INTERESTED IN MORE STORES. THE WITNESS THEN TESTIFIED THAT MR. WEISBERG THEN STATED THAT HE WOULD GO INTO THE PREMISES ALONE. MR. GOODBAUM GAVE EVIDENCE THAT SUBSEQUENTLY THE RESPONDENT PICKED UP THE OFFER TO LEASE WITH EASTOWN ASSOCIATES WHICH MR. WEISBERG HAD SIGNED ON AUGUST 17, 1972 AND THAT IT WAS MR. GOODBAUM'S RESPONSIBILITY FOR APPROACHING A & P ABOUT THE FIXTURES. HE INFORMED THE BOARD THAT HE DID THIS ONCE THE RESPONDENT HAD A DEAL WITH THE LEASE AND THIS OCCURRED DURING THE FIRST PART OF SEPTEMBER 1972. MR. GOODBAUM GAVE EVIDENCE THAT HE TELEPHONED MR. MORRISON AFTER MR. WEISBERG HAD TOLD HIM THAT HE COULD GET THE FIXTURES. HE GAVE EVIDENCE THAT ON SEPTEMBER 6, 1972, HE WENT TO SEE THE FIXTURES IN THE PREMISES AND THAT HE HAD BEEN GIVEN THE PRICE OF \$30,000 OVER THE TELEPHONE. HE INFORMED THE BOARD THAT AFTER HE HAD MADE THE VISIT, HE APPROVED THE PURCHASE OF THE FIXTURES FROM A & P.

11. THE WITNESS INFORMED THE BOARD THAT THE RESPONDENT MOVED INTO THE PREMISES AT THE BEGINNING OF THE LEASE IN OCTOBER 1972 AND OPENED FOR BUSINESS ON NOVEMBER 1, 1972. MR. GOODBAUM TESTIFIED THAT A & P TOOK AWAY ALL OF THE STOCK AND THAT THE RESPONDENT INVESTED ANOTHER \$30,000 IN THE STORE AND SUPPLIED MORE THAN \$100,000 WORTH OF FRESH INVENTORY. HE GAVE EVIDENCE THAT THE RESPONDENT WAS UNDER NO OBLIGATION TO A & P OTHER THAN THE MONEY FOR THE PURCHASE OF THE FIXTURES. THE WITNESS STATED THAT HE WAS NOT AWARE OF ANY RELATIONSHIP BETWEEN A & P AND THE LESSOR OF THE PREMISES, EASTOWN ASSOCIATES. HE GAVE EVIDENCE THAT THERE WERE NO DISCUSSIONS BETWEEN THE RESPONDENT AND A & P REGARDING THE LEASE AND THAT THE RESPONDENT WAS COMMITTED TO

THE LEASE BEFORE IT DEALT WITH A & P. MR. GOODBAUM INFORMED THE BOARD THAT HE WAS ADVISED BY MR. WEISBERG THAT THE OFFER TO LEASE WAS FIRMED UP SHORTLY AFTER AUGUST 24, 1972. THE WITNESS STATED THAT HE SPOKE TO A & P ABOUT THE LEASE SHORTLY AFTER THE MEETING ON SEPTEMBER 6, 1972.

12. IN CROSS-EXAMINATION, MR. GOODBAUM AGREED THAT HE FOUND THE LOCATION OF THE PREMISES ATTRACTIVE AND ALSO FOUND ATTRACTIVE THE FACT THAT A & P DOES NOT HAVE A COMPETING STORE IN BRAMPTON. MR. GOODBAUM INFORMED THE BOARD THAT IT WAS NOT A CONSIDERATION FOR LEASING THE PREMISES THAT A & P DOES NOT HAVE A COMPETING STORE IN THE BRAMPTON AREA. THE WITNESS DISAGREED WITH THE TESTIMONY OF MR. MORRISON CONCERNING THE FIRST CONTACT WITH THE RESPONDENT SIX WEEKS PRIOR TO SEPTEMBER 7, 1972 AND STATED THAT HE DID NOT HAVE SUCH A PRIOR CONVERSATION WITH MR. MORRISON AND THOUGHT THAT THE PRIOR CONVERSATION WAS PROBABLY WITH MR. WEISBERG. THE WITNESS STATED THAT THERE WAS NO NEGOTIATION ON THE FIGURE OF \$30,000 WHICH WAS QUOTED AND ACCEPTED BY THE RESPONDENT. THE WITNESS AGREED THAT HE HAD VISITED THE SHOPPING PLAZA IN WHICH THE PREMISES ARE LOCATED AS PART OF A GENERAL SEARCH FOR NEW LOCATIONS WITHIN THE LAST YEAR OR SO.

13. COUNSEL FOR THE APPLICANTS POINTED OUT THAT A & P HAD CARRIED ON BUSINESS IN A SHOPPING CENTRE IN BRAMPTON FOR TEN YEARS, DEVELOPED THE TRADE AND CLIENTELE OF SOME VALUE IN THE FOOD INDUSTRY, AND HAD GIVEN NOTICE FOR THE EXPIRATION OF THE LEASE. HE ALSO POINTED OUT THAT MR. MORRISON HAD MADE AN OFFER TO A & P, THAT SOME CONTRACTS HAD BEEN MADE BY MR. GOODBAUM SOME WEEKS EARLIER CONFIRMING THE VISIT TO THE PREMISES AND THAT THE CONTENTS OF THE PREMISES WERE SOLD TO THE RESPONDENT. HE STRESSED THAT ALTHOUGH GOODBAUM STATED THAT CONTACT WAS NOT MADE UNTIL AUGUST 24, WEISBERG HAD A ONE EIGHTH INTEREST IN THE RESPONDENT AND THAT WHETHER WEISBERG OR GOODBAUM MADE THE CONTACT, IT WAS QUITE CLEAR THAT THE RESPONDENT WAS ACTIVELY INTERESTED IN THE ACQUISITION OF THE STORE CONTENTS. HE URGED IT WAS REASONABLY CLEAR THAT THE RESPONDENT WISHED TO ACQUIRE AN ALTERNATIVE LOCATION AND, INCIDENTALLY, THE CONTENTS OF THE STORE AND THAT THE INTEREST OF THE RESPONDENT WAS THE INTEREST IN AN ATTRACTIVE LOCATION AND THE PREMISES. HE ALSO ARGUED THAT THE RESPONDENT WAS INTERESTED IN HAVING THE CONTENTS OF THE PREMISES SOLD AS EARLY AS SEPTEMBER 6 OR 7 AND THAT THIS WAS PRIOR TO THE DEAL BEING CONSUMMATED IN SEPTEMBER.

14. THE RESPONDENT, COUNSEL FOR THE APPLICANTS ARGUED, WAS IN THE BUSINESS OF RETAIL FOOD COMPETITION BY WAY OF A TWO-WAY TRANSACTION. FIRSTLY, TAKING UP AN EXPIRED LEASE, AND, SECONDLY, TAKING THE CONTENTS MINUS THE FOOD INVENTORY. COUNSEL FOR THE APPLICANTS REFERRED TO EARLIER DECISIONS OF THE BOARD, NAMELY, THE KITCHENER FOOD MARKET CASE, BOARD FILE NO. 10220-64-M; THE L & M FOOD MARKET (ONTARIO) LIMITED CASE, BOARD FILE NO. 10599-65-M; THE LEADER'S CLOVER FARMS FOOD MARKET CASE, OLRB MONTHLY REPORT NOVEMBER 1966, P. 636; THE SUNNYBROOK FOOD MARKET CASE, OLRB MONTHLY REPORT OCTOBER 1966, P. 531; AND THE SUPER CITY DISCOUNT FOODS LIMITED CASE, OLRB MONTHLY REPORT APRIL 1970, P. 118. COUNSEL FOR THE APPLICANTS REVIEWED THESE CASES AND ARGUED THAT THE ONLY

DIFFERENCE BETWEEN THESE CASES AND THE PRESENT CASE WAS THE DISPOSITION OF THE REAL ESTATE. HE ARGUED THAT THE RESULT SHOULD NOT BE DIFFERENT WHEN A COMPANY WISHES TO TAKE OVER AN OUTLET SIMPLY BECAUSE IT TAKES OVER WITHOUT INTERRUPTION OF THE LEASE ON ITS EXPIRY DATE.

15. COUNSEL FOR THE RESPONDENT ARGUED THAT THE APPLICANTS WERE SEEKING TO LUMP TOGETHER THE SALE OF ASSETS BY A & P AND THE LEASE OF PROPERTY BY EASTOWN ASSOCIATES. HE POINTED OUT THAT THERE WAS NO EVIDENCE THAT EASTOWN ASSOCIATES AND A & P HAD ANY RELATIONSHIP THAT CONTINUED AFTER THE EXPIRY OF THE LEASE. IN THE VIEW OF THE COUNSEL FOR THE RESPONDENT, THIS WAS VERY SIGNIFICANT. HE ALSO URGED A STRICTER INTERPRETATION OF SECTION 55 OF THE LABOUR RELATIONS ACT FOLLOWING ITS AMENDMENT. COUNSEL FOR THE RESPONDENT ALSO DISTINGUISHED THE FACTS PRESENT IN THE CASES CITED BY COUNSEL FOR THE APPLICANTS FROM THE FACTS OF THE INSTANT CASE. COUNSEL FOR THE RESPONDENT STRESSED THAT SOME OF THE ASSETS SOLD TO THE RESPONDENT BY A & P WOULD OTHERWISE HAVE GONE INTO THE JUNK YARD. HE ALSO POINTED OUT THAT THE RESPONDENT FURNISHED AN ADDITIONAL \$30,000 IN ASSETS FOR THE PREMISES AND ALSO PROVIDED \$100,000 IN FOOD INVENTORY BEFORE THE PREMISES WERE OPENED. HE ALSO NOTED THAT THERE WAS A GAP OF ONE AND A HALF MONTHS BETWEEN THE TIME OF CLOSING AND THE TIME OF OPENING, AND THAT A & P HAD NO INTEREST IN THE PREMISES TO SELL AND CONVEY AND THAT THIS WAS A BASIC DISTINCTION BETWEEN THE INSTANT CASE AND THE KITCHENER FOOD MARKET CASE, SUPRA.

16. COUNSEL FOR THE RESPONDENT ALSO STRESSED THAT THE EVIDENCE REVEALED THREE REASONS FOR A & P NOT TO RENEW THE OPTIONS TO LEASE. FIRSTLY, THE PREMISES WERE TOO SMALL. SECONDLY, THE PREMISES WERE A MARGINAL OPERATION, AND, THIRDLY, A & P WAS HOPEFUL AND HAD AN INTEREST INTO NEGOTIATIONS FOR THE PURCHASE OF A NEW LOCATION FOR 30,000 SQ. FT. BUT HAD ENCOUNTERED A ZONING PROBLEM. HE ADDED THAT THE THREE FULL-TIME EMPLOYEES HAD CONTINUED IN THE EMPLOY OF A & P AND THAT THERE WAS NO INTENT BY A & P TO GIVE ANY GOODWILL TO THE RESPONDENT. COUNSEL FOR THE RESPONDENT NOTED THAT THE UNWANTED ASSETS WERE SOLD AND THERE WAS AN INTENTION TO CONTINUE BUSINESS IN THE SAME AREA. HE ALSO STRESSED THE DIFFERENCE IN THE RENTS UNDER THE TWO LEASES AND ARGUED THAT THIS INDICATED THAT THERE WAS NO CIRCUMVENTING OF THE LEGISLATION. HE MAINTAINED THAT THE NOTICE NOT TO RENEW THE LEASE WAS DATED MARCH 27, 1972, THAT THE SALE OF ASSETS BY A & P TO THE RESPONDENT BECAME AN OFFER ONLY ON SEPTEMBER 6 AND 7, 1972, THAT AUGUST 17 WAS THE EARLIEST OFFER RESPECTING THE LEASE AND THAT THERE WAS NO EVIDENCE OF ANY CONNECTION RESPECTING THE LEASE BETWEEN THE RESPONDENT AND EASTOWN ASSOCIATES AND THE TRANSACTION BETWEEN THE RESPONDENT AND A & P.

17. IN REPLY, COUNSEL FOR THE APPLICANTS STATED THAT THE UNWANTED ASSETS VALUED AT \$30,000 WERE AN ACQUISITION UNDER AN ONGOING LEASE COUPLED WITH ASSETS. HE ARGUED THAT IN THE RETAIL FOOD MARKET BUSINESS, THE BUSINESS ADHERES IN THE PREMISES. HE FURTHER ARGUED THAT AS LONG AS IT IS ACQUIRED AS A GOING CONCERN, THEN YOU HAVE AN ACQUISITION UNDER SECTION 55 OF THE LABOUR RELATIONS ACT.

18. THE BOARD HAS CONSIDERED THE REPRESENTATIONS OF THE PARTIES AND THE AUTHORITIES CITED TO THE BOARD. THE SUPER CITY DISCOUNT FOODS LIMITED CASE, SUPRA, INVOLVED A TRANSACTION BETWEEN TWO ASSOCIATED COMPANIES. ALTHOUGH THERE WAS LITTLE DETAILED EVIDENCE IN THAT CASE, THE BOARD FOUND THAT THERE WAS AN INESCAPABLE INFERENCE THAT A SALE OF A BUSINESS HAD OCCURRED. IN THE INSTANT CASE, THERE IS NOTHING BEFORE THE BOARD TO INDICATE THAT THE TRANSACTIONS INVOLVED DID NOT OCCUR AT ARM'S LENGTH. SIMILARLY, IN THE SUNNYBROOK FOOD MARKET CASE, SUPRA, THE BOARD FOUND THAT A SALE OF A BUSINESS HAD NOT OCCURRED WITHIN THE MEANING OF SECTION 47A (NOW SECTION 55) OF THE LABOUR RELATIONS ACT, WHERE AN EMPLOYER CHANGED THE LOCATION OF ITS BUSINESS OPERATIONS WITHIN A PARTICULAR MARKET AREA, AND IN SO DOING, DISPOSED OF CERTAIN UNWANTED PREMISES AND OTHER ASSETS TO A COMPETITOR.

19. THE KITCHENER FOOD MARKET CASE, SUPRA, THE L & M FOOD MARKET (ONTARIO) LIMITED CASE, SUPRA, AND THE LEADER'S CLOVER FARMS FOOD MARKET CASE, SUPRA, ARE MORE PERTINENT TO THE INSTANT CASE BEFORE THE BOARD. IN THE KITCHENER FOOD MARKET CASE, SUPRA, WHEREIN THE BOARD FOUND THAT A SALE OF A BUSINESS HAD OCCURRED, THE BOARD FOUND THAT THE OFFER TO PURCHASE FIXTURES AND EQUIPMENT WAS WHOLLY CONTINGENT UPON THE PURCHASER SECURING AN ASSIGNMENT OF THE LEASE ON THE PREMISES IN QUESTION. IN THE L & M FOOD MARKET (ONTARIO) LIMITED CASE, SUPRA, THE PURCHASER BECAME THE TENANT OF THE VENDOR UNDER A FIVE YEAR LEASE AND UNDER THE TERMS OF THE LEASE ALSO LEASED CERTAIN STORE EQUIPMENT FROM THE VENDOR AND PURCHASED CERTAIN OF THE VENDOR'S STOCK OF STORE MERCHANDISE. THE BOARD HELD IN THAT CASE THAT A DISPOSITION OF A BUSINESS HAD OCCURRED WITHIN THE MEANING OF SECTION 47A (NOW SECTION 55) OF THE LABOUR RELATIONS ACT. IN THE LEADER'S CLOVER FARMS FOOD MARKET CASE, SUPRA, THE PURCHASER PURCHASED FROM THE VENDOR ITS SUPERMARKET PREMISES, ALL EQUIPMENT AND FIXTURES, THE REAL PROPERTY UPON WHICH THE PREMISES WERE LOCATED AND THE STOCK-IN-TRADE. EXCLUDED FROM THE TRANSACTION WERE THE VENDOR'S PRODUCTS, FROZEN FOODS, MEAT PRODUCE AND DAMAGED STOCK. THE BOARD HELD THAT THE TRANSACTION WAS A SALE OF A BUSINESS WITHIN THE MEANING OF SECTION 47A (NOW SECTION 55) OF THE LABOUR RELATIONS ACT.

20. IN THE THREE LAST-MENTIONED CASES, THERE WAS A TRANSACTION BETWEEN THE VENDOR AND THE PURCHASER WHICH INVOLVED THE TRANSFER OF AN INTEREST IN REALTY OR LEASEHOLD IN ADDITION TO THE TRANSFER OF CERTAIN ASSETS.

21. IN THE INSTANT CASE, THE RESPONDENT OBTAINED AN INTEREST IN THE LEASEHOLD OF THE PREMISES FROM EASTOWN ASSOCIATES AND NOT FROM A & P. A & P CLEARLY TERMINATED ITS LEASE WITH EASTOWN ASSOCIATES ON SEPTEMBER 30, 1972, BY NOTICE GIVEN IN MARCH, 1972. MR. GOODBAUM WAS UNSHAKEN DURING CROSS-EXAMINATION CONCERNING HIS TESTIMONY THAT HE HAD NOT BEEN CONTRACTED BY MR. MORRISON SIX WEEKS PRIOR TO SEPTEMBER 7, 1972. HAVING REGARD TO THE FORTHRIGHT MANNER IN WHICH MR. GOODBAUM GAVE HIS EVIDENCE AND TO THE VAGUENESS OF MR. MORRISON IN HIS TESTIMONY ON CERTAIN POINTS, WE ACCEPT THE EVIDENCE OF MR. GOODBAUM IN PREFERENCE TO THE EVIDENCE OF MR. MORRISON ON THIS POINT OF

CONFLICT. THERE IS NO EVIDENCE BEFORE THE BOARD TO ESTABLISH THAT MR. WEISBERG WAS ACTING ON BEHALF OF THE RESPONDENT WHEN HE SIGNED THE OFFER TO LEASE WITH EASTOWN ASSOCIATES ON AUGUST 17, 1972.

22. THE RESPONDENT SIGNED THE LEASE WITH EASTOWN ASSOCIATES ON AUGUST 31, 1972 AND IT WAS NOT UNTIL SEPTEMBER 7, 1972 THAT MR. MORRISON SENT OUT A LETTER REGARDING THE SALE OF FIXTURES TO THE RESPONDENT. THE BOARD FINDS THAT THE SALE OF FIXTURES OCCURRED SUBSEQUENT TO THE SIGNING OF THE LEASE BETWEEN THE RESPONDENT AND EASTOWN ASSOCIATES AND THAT NEITHER TRANSACTION WAS MADE CONDITIONAL UPON THE SUCCESSFUL COMPLETION OF THE OTHER TRANSACTION. IN OUR VIEW, THESE TWO TRANSACTIONS WERE SEPARATE TRANSACTIONS.

23. THE UNCONTRADICTED TESTIMONY OF MR. MORRISON IS THAT WHILE THE LEASE BETWEEN A & P AND EASTERN ASSOCIATES WAS SILENT ON THE ASSIGNMENT OF THE LEASE, A & P UNDERSTOOD IT COULD HAVE ASSIGNED THE LEASE IF IT SO DESIRED. THERE IS NO EVIDENCE THAT A & P AND THE RESPONDENT EVER CONTEMPLATED AN ASSIGNMENT OF THE LEASE BETWEEN A & P AND EASTOWN ASSOCIATES. ONCE A & P HAD NOTIFIED EASTOWN ASSOCIATES THAT IT WOULD NOT BE EXTENDING THE LEASE, EASTOWN ASSOCIATES WAS FREE, ONCE THE LEASE EXPIRED, TO LEASE THE PREMISES TO A THIRD PARTY.

24. WE DO NOT AGREE WITH THE SWEEPING PROPOSITION ADVANCED BY COUNSEL FOR THE APPLICANTS THAT IN THE RETAIL FOOD MARKET BUSINESS, THE BUSINESS ADHERES IN THE PREMISES. IN OUR VIEW, THE SALE OF FIXTURES BY A & P TO THE RESPONDENT, IN THE CIRCUMSTANCES OF THIS APPLICATION, WAS MERELY THE SALE OF UNWANTED ASSETS AND WAS NOT THE SALE OF A BUSINESS WITHIN THE MEANING OF SECTION 55 OF THE LABOUR RELATIONS ACT.

24. IN THE RESULT, THE APPLICATION IS DISMISSED.

4995-73-R: SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL 285 (APPLICANT) v. MALTON SHEET METAL LIMITED (RESPONDENT).

BEFORE: D. H. KATES, VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: A. L. MOORE AND M. SOUCIER FOR THE APPLICANT; W. J. MCNAUGHTON AND F. BECKMAN FOR THE RESPONDENT.

DECISION OF THE BOARD: JANUARY 29, 1974.

1. COUNSEL FOR THE RESPONDENT SUBMITS THAT BECAUSE THE RESPONDENT IS AN EMPLOYER ENGAGED IN THE CONSTRUCTION INDUSTRY WITHIN THE MEANING OF S106(c) OF THE ACT AND EMPLOYS EMPLOYEES THAT INCLUDE OFF-SITE EMPLOYEES THAT ARE ASSOCIATED IN THEIR WORK OR BARGAIN WITH ON-SITE EMPLOYEES, UNDER S106(b) OF THE ACT THE INSTANT APPLICATION IS MORE APPROPRIATELY FOUNDED UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF

THE ACT RATHER THAN THE REGULAR PROVISIONS. IN FACT IT IS URGED THAT THE FAILURE BY THE APPLICANT TO PURSUE THE CONSTRUCTION INDUSTRY PROVISIONS OF THE ACT OPERATES TO PRECLUDE THE APPLICANT FROM PURSUING ITS APPLICATION UNDER THE REGULAR PROVISIONS. (IE FORM 1) THE EXPRESSIO UNIVS MAXIM AS APPLIED IN THE OAKVILLE TRAFALGAR MEMORIAL HOSPITAL ASSOCIATION CASE 72 CLLC ¶14,118 (CA) PER JESSUP J.A. AT P. 14,596 IS QUOTED IN SUPPORT OF THE PROPOSITION THAT THE APPLICATION IS ILL CONCEIVED AND THEREFORE SHOULD BE DISMISSED.

2. ALTHOUGH IT MAY BE THAT THE APPLICANT WOULD HAVE BEEN WELL ADVISED TO HAVE APPLIED TO THE BOARD PURSUANT TO THE CONSTRUCTION INDUSTRY PROVISIONS OF THE ACT, THIS BOARD CAN DISCERN NOTHING IN THE LABOUR RELATIONS ACT GENERALLY TO HAVE REQUIRED IT TO DO SO. THE GOVERNING PROVISION OF THE ACT READS AS FOLLOWS:

S107 WHERE THERE IS CONFLICT BETWEEN ANY PROVISION IN SECTIONS 108 TO 124 AND ANY PROVISION IN SECTION 5 TO 49 AND 54 TO 105, THE PROVISIONS IN SECTIONS 108 TO 124 PREVAIL.

3. THIS BOARD SIMPLY CANNOT DISCERN "A CONFLICT" AS CONTEMPLATED BY S107 MERELY BECAUSE THE APPLICANT IN THE CIRCUMSTANCES OF THIS CASE HAS ELECTED TO PURSUE THE ONE PATH IN DEFERENCE TO THE OTHER. (SEE; THE K. J. BEAMISH CONSTRUCTION CO. LTD. CASE 65 CLLC ¶16,065). IT FOLLOWS THAT COUNSEL'S PRELIMINARY SUBMISSION THAT THE APPLICATION BE DISMISSED IS DENIED.

4. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

5. ON AGREEMENT OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL JOURNEYMEN SHEET METAL WORKERS AND THEIR APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

6. COUNSEL FOR THE RESPONDENT ARGUES IN THE ONE INSTANCE THAT BECAUSE THE SISTER LOCAL 30 OF THE APPLICANT REPRESENTS EMPLOYEES IN THE COMMERCIAL, INSTITUTIONAL AND INDUSTRIAL SECTOR OF THE CONSTRUCTION INDUSTRY AND SINCE THE RESPONDENT CONFINES ITS UNDERTAKING TO THAT SECTOR OF THE CONSTRUCTION INDUSTRY, THE APPLICANT IS THEREBY INCAPACITATED FROM REPRESENTING THE EMPLOYEES OF THE RESPONDENT FOR COLLECTIVE BARGAINING PURPOSES. RATHER, IT IS SUGGESTED, THE APPLICANT LOCAL 285 IS CONFINED WITH RESPECT TO ITS REPRESENTATIVE CAPACITY TO EMPLOYEES ENGAGED BY EMPLOYERS IN THE RESIDENTIAL SECTOR. A VARIATION OF THE SAME SUBMISSION IS MADE WITH RESPECT TO URGING THE BOARD TO CONFINED THE APPROPRIATE UNIT TO THE RESIDENTIAL SECTOR.

7. HAVING REGARD TO THE EVIDENCE ADDUCED AND MORE PARTICULARLY, AS THAT EVIDENCE PERTAINED TO THE PAST PRACTICE OF THE APPLICANT IN REPRESENTING EMPLOYEES EMPLOYED BY EMPLOYERS ENGAGED IN BOTH SECTORS OF THE CONSTRUCTION INDUSTRY, THIS BOARD DISMISSES THE ARGUMENT BY COUNSEL RELATING TO LOCAL 285'S CAPACITY TO REPRESENT THE EMPLOYEES AFFECTED BY THIS APPLICATION [SEE S92(4) OF THE ACT]. FURTHERMORE, THE BOARD FINDS NO MERIT IN THE CIRCUMSTANCES OF THIS CASE IN CONFINING THE APPROPRIATE UNIT DESCRIPTION TO EMPLOYEES ENGAGED IN THE RESIDENTIAL SECTOR OF THE CONSTRUCTION INDUSTRY.

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9. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

4049-73-R: NURSES' ASSOCIATION WELLESLEY HOSPITAL, TORONTO (APPLICANT)
V. THE WELLESLEY HOSPITAL (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: D.E. FRANKS, VICE-CHAIRMAN, AND BOARD MEMBERS D.B. ARCHER AND F.W. MURRAY.

APPEARANCES AT THE HEARING: D.F.O. HERSEY FOR THE APPLICANT; B.H. STEWART, E. MUSTARD AND K. KORT FOR THE RESPONDENT; NO ONE APPEARING FOR THE OBJECTORS.

DECISION OF THE BOARD: JANUARY 29, 1974.

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2. THE APPLICANT IN THE PRESENT CASE HAS PROPOSED A BARGAINING UNIT CONSISTING OF REGISTERED AND GRADUATE NURSES IN THE EMPLOY OF THE RESPONDENT SUBJECT TO CERTAIN EXCLUSIONS WHICH WE WILL DEAL WITH LATER. THE RESPONDENT HAS PROPOSED A BARGAINING UNIT CONSISTING OF REGISTERED AND GRADUATE NURSES AND REGISTERED NURSING ASSISTANTS AND NON-REGISTERED NURSING ASSISTANTS ENGAGED IN NURSING CARE EMPLOYED BY THE RESPONDENT, ALSO SUBJECT TO CERTAIN EXCLUSIONS TO BE DEALT WITH LATER. THE BOARD APPOINTED AN EXAMINER TO DEAL WITH THE COMPOSITION OF THE BARGAINING UNIT AND SUBSEQUENT TO THE ISSUANCE OF THE EXAMINER'S REPORT THE BOARD HEARD THE REPRESENTATIONS OF THE PARTIES AS TO THE EFFECT TO BE GIVEN THAT REPORT.

3. THE DIFFERENCE BETWEEN THE APPLICANT AND THE RESPONDENT ON THE APPROPRIATE BARGAINING UNIT CENTERS AROUND THE INCLUSION OF REGISTERED NURSING ASSISTANTS IN THE APPROPRIATE BARGAINING UNIT IN THE PRESENT CASE. THE PROBLEM ARISES FROM THE FACT THAT THE REGISTERED NURSING ASSISTANTS ARE NOT INCLUDED IN THE BARGAINING UNIT IN THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 204. THE BOARD'S RECORDS DO NOT INDICATE THAT THAT LOCAL WAS CERTIFIED WITH RESPECT TO ANY OF THE EMPLOYEES OF THE RESPONDENT. FURTHER, THE EXAMINER'S REPORT INDICATES THAT THE PERSONNEL DIRECTOR

OF THE RESPONDENT HOSPITAL HAD NO INFORMATION AS TO WHEN OR HOW THE SERVICE EMPLOYEES INTERNATIONAL UNION OBTAINED THEIR BARGAINING RIGHTS OR WHY THE REGISTERED NURSING ASSISTANTS WERE EXCLUDED FROM THAT BARGAINING UNIT. IT HAS BEEN THE POLICY OF THIS BOARD SINCE THE INITIAL APPLICATIONS FOR HOSPITALS BY SUCH UNIONS AS THE SERVICE EMPLOYEES INTERNATIONAL UNION TO FIND AN "ALL EMPLOYEE UNIT" WHICH INCLUDES REGISTERED NURSING ASSISTANTS IN THE APPROPRIATE BARGAINING UNIT. THUS, THE PROBLEM IN THE PRESENT CASE STEMS FROM THE ORIGINAL DEPARTMENTURE OF NOT INCLUDING REGISTERED NURSING ASSISTANTS IN THE "SERVICE EMPLOYEES UNIT" AND IN THIS RESPECT THE PRESENT CASE DIFFERS FROM OTHER CASES WHERE THE INCLUSION OR EXCLUSION OF REGISTERED NURSING ASSISTANTS IN VARIOUS UNITS HAS BEEN PROPOSED.

4. THE EXAMINER'S REPORT DESCRIBES IN SOME DETAIL THE ORGANIZATION OF THE RESPONDENT HOSPITAL IN RELATION TO NURSES AND NURSING ASSISTANTS. DETAILS OF THE WORK PERFORMED AND THE WORKING CONDITIONS OF BOTH THE REGISTERED NURSES AND THE REGISTERED NURSING ASSISTANTS HAVE BEEN SET OUT IN THAT REPORT. FROM THE REPORT OF THE EXAMINER IT IS CLEAR THAT THROUGH AN ORGANIZATIONAL METHOD REFERRED TO AS "TEAM NURSING" THE RESPONDENT USES TEAMS OF BOTH REGISTERED NURSES AND REGISTERED NURSING ASSISTANTS IN PATIENT CARE, ALTHOUGH THE TEAM LEADER IS ALWAYS A REGISTERED NURSE AND WOULD NEVER BE A REGISTERED NURSING ASSISTANT. THE RESPONDENT HOSPITAL APPARENTLY HAS SOME FORTY-EIGHT (48) REGISTERED NURSING ASSISTANTS ON STAFF AND SOME FOUR HUNDRED AND THIRTY-TWO (432) REGISTERED NURSES. IT WOULD APPEAR THAT THE RATIO OF REGISTERED NURSING ASSISTANTS TO REGISTERED NURSES IS SET BY REGULATION AND THAT THE RESPONDENT'S OPERATION IS WELL WITHIN THE PRESCRIBED RATIO. IT IS ALSO CLEAR THAT ALTHOUGH THE REGISTERED NURSING ASSISTANTS CAN PERFORM MANY FUNCTIONS THAT ARE PERFORMED BY REGISTERED NURSES IN THE AREA OF PATIENT CARE, THERE ARE LIMITS ON THE EXTENT OF PATIENT CARE WHICH CAN BE PROVIDED BY REGISTERED NURSING ASSISTANTS.

5. THE RESPONDENT RAISED A NUMBER OF ARGUMENTS AS TO WHY THE BOARD OUGHT TO FIND ON THE FACTS OF THE PRESENT CASE THAT THE APPROPRIATE UNIT SHOULD INCLUDE BOTH REGISTERED NURSES AND REGISTERED NURSING ASSISTANTS. THE BASIC ARGUMENT UPON WHICH THE RESPONDENT RELIES IS THAT ON THE BASIS OF THE TESTS SET OUT IN THE USARCO LTD. CASE (1967) SEPTEMBER OLRB MTHLY. REP. 526, THE BOARD OUGHT TO FIND ONE APPROPRIATE BARGAINING UNIT INCLUDING BOTH REGISTERED NURSES AND REGISTERED NURSING ASSISTANTS. THE RESPONDENT SUBMITTED A LENGTHY ANALYSIS OF THE EXAMINER'S REPORT REFERRING TO THOSE ITEMS IN THE REPORT DEALING WITH THE COMMUNITY OF INTEREST BETWEEN TWO GROUPS, THE CENTRALIZATION OF MANAGERIAL AUTHORITY, THE ECONOMIC FACTORS AND THE SOURCE OF WORK.

6. IN ADDITION TO THE USARCO TESTS THE RESPONDENT ALSO ARGUED THAT GIVEN THE PRESENT FRAGMENTED SITUATION IN THE RESPONDENT'S OPERATION THE BOARD OUGHT NOT TO FURTHER FRAGMENT COLLECTIVE BARGAINING BY EXCLUDING THE REGISTERED NURSING ASSISTANTS FROM A BARGAINING UNIT OF REGISTERED NURSES. IT WOULD APPEAR THAT IN ADDITION TO THE COLLECTIVE AGREEMENT WITH THE SERVICE EMPLOYEES INTERNATIONAL UNION THE

RESPONDENT ALSO HAS A COLLECTIVE AGREEMENT WITH THE INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 COVERING THE ENGINEERS IN THE POWER PLANTS AND A RECENT CERTIFICATION OF THE CSAO NATIONAL INC. FOR LABORATORY TECHNOLOGISTS, TECHNICIANS AND ASSISTANTS. THE RESULT IS THAT THE RESPONDENT FACES THE POSSIBILITY OF SOME SEVEN BARGAINING SITUATIONS AND THE BOARD'S DECISION IN THE PRESENT CASE, IF IT FOUND IN FAVOUR OF THE APPLICANT COULD EFFECTIVELY INCREASE THAT TO SOME EIGHT POSSIBLE BARGAINING SITUATIONS. COUNSEL FOR THE RESPONDENT ALSO SOUGHT SUPPORT FOR HIS POSITION ON THE GROUNDS THAT BOTH REGISTERED NURSES AND REGISTERED NURSING ASSISTANTS ARE COVERED BY THE NURSES ACT AND THAT IT MAKES GOOD LABOUR RELATIONS SENSE THAT THEY SHOULD BE TREATED AS PART OF THE SAME BARGAINING UNIT BY THE BOARD.

7. ON THE OTHER HAND IT SHOULD BE POINTED OUT THAT THE RESPONDENT DOES NOT CLAIM THAT THE APPLICANT'S PROPOSED BARGAINING UNIT WILL LEAD TO AN IMPOSSIBLE SITUATION IN COLLECTIVE BARGAINING FOR THE RESPONDENT. A BARGAINING UNIT CONSISTING SOLELY OF REGISTERED NURSES WOULD RESULT IN CHANGES IN THE ADMINISTRATION OF THE RESPONDENT'S OPERATIONS, BUT, AS COUNSEL POINTED OUT, THE HOSPITAL COULD LIVE WITH THAT SORT OF ADJUSTMENT.

8. THE BASIC POSITION OF THE APPLICANT IS THAT THE ARGUMENTS RAISED ARGUMENTS RAISED BY THE RESPONDENT ARE ESSENTIALLY IRRELEVANT WITH RESPECT TO THE DETERMINATION WHICH THE BOARD MUST MAKE IN THE PRESENT CASE. THE APPLICANT DOES NOT CONCEDE TO THE INTERPRETATION OF THE EXAMINER'S REPORT IN RELATION TO THE Usarco TESTS REFERRED TO ABOVE, BUT ARGUES INSTEAD THAT THE ONLY DETERMINATION THAT THE BOARD HAS TO MAKE IN THE PRESENT CASE IS THAT THE UNIT APPLIED FOR IS AN APPROPRIATE UNIT OF EMPLOYEES FOR COLLECTIVE BARGAINING. THE BOARD HAS ON A NUMBER OF OCCASIONS HELD THAT A UNIT CONSISTING OF REGISTERED AND GRADUATE NURSES IS CAPABLE OF BEING A VIABLE BARGAINING RELATIONSHIP AND THAT ESSENTIAL FACT IS NOT DENIED BY THE RESPONDENT IN THE PRESENT CASE.

9. IN THE BOARD OF EDUCATION FOR THE CITY OF TORONTO CASE, (1970) JULY OLRB MTHLY. REP. 430, THE BOARD DEALT WITH THE DECISION WHICH THE BOARD MUST MAKE PURSUANT TO SECTION 6(1) OF THE LABOUR RELATIONS ACT. AT P. 435 THE BOARD COMMENTED AS FOLLOWS:

"THE FACT FINDING PROCESS IS AT ALL TIMES DIRECTED TOWARD AND GOVERNED BY THE CONCEPT OF APPROPRIATENESS AND THE ESSENCE OF APPROPRIATENESS IN THE CONTEXT OF LABOUR RELATIONS IS THAT THE UNIT OF EMPLOYEES BE ABLE TO CARRY ON A VIABLE AND MEANINGFUL COLLECTIVE BARGAINING RELATIONSHIP WITH THEIR EMPLOYER. IT IS THE BOARD'S EXPERIENCE THAT EMPLOYEES MAY IN SOME CASES SUBDIVIDE THEMSELVES INTO SMALL GROUPS WHICH MAY RESULT IN AN UNNECESSARY FRAGMENTATION OR ATOMIZATION OF THE

EMPLOYEES. THUS AN EMPLOYER FACED WITH THE POSSIBILITY OF LENGTHY, PROTRACTED AND EXPENSIVE BARGAINING AND THE FURTHER POSSIBILITY OF JURISDICTIONAL DISPUTES AMONG MULTIPLE BARGAINING GROUPS REPRESENTED BY ONE OR MORE TRADE UNIONS MAY FIND IT IMPOSSIBLE TO CARRY ON A VIABLE AND MEANINGFUL COLLECTIVE BARGAINING RELATIONSHIP. THE BOARD THEREFORE IS ADVERSE TO CERTIFYING EMPLOYEE GROUPS WHERE THE RESULT IS UNDUE FRAGMENTATION AND IN THOSE CIRCUMSTANCES THE BOARD WILL FIND THE UNIT PROPOSED IN-APPROPRIATE ON THE BASIS THAT A MEANINGFUL AND VIABLE COLLECTIVE BARGAINING RELATIONSHIP WILL NOT RESULT. SEE E.G. WATERLOO COUNTY HEALTH UNIT, 1969 JANUARY OLRB MTHLY. REP. 1016."

THE BOARD CONCLUDED AT P. 437 AS FOLLOWS:

"IN CONCLUSION WE HOLD THAT WHERE SECTION 6(1) REFERS TO "THE UNIT OF EMPLOYEES THAT IS APPROPRIATE" IT DOES NOT IMPOSE ANY REQUIREMENT THAT THE BOARD CHOOSE THE MORE OR MOST COMPREHENSIVE UNIT - IT ONLY REQUIRES THE BOARD TO DETERMINE THE UNIT OF EMPLOYEES THAT IS APPROPRIATE FOR COLLECTIVE BARGAINING HAVING PARTICULAR REGARD TO THE FACTS OF THE IMMEDIATE APPLICATION."

10. IN THE PRESENT CASE IT MAY VERY WELL BE THAT THE RESPONDENT CAN DEMONSTRATE THAT THE MOST APPROPRIATE GROUPING OF EMPLOYEES FOR COLLECTIVE BARGAINING WOULD INCLUDE REGISTERED NURSING ASSISTANTS WITH REGISTERED NURSES. THIS IS NOT HOWEVER THE DETERMINATION WHICH THE BOARD IS REQUIRED TO MAKE UNDER SECTION 6(1) OF THE ACT, AND ALTHOUGH SUCH DECISIONS ARE SOMETIMES MADE IN CERTIFICATION CASES, WE ARE RELUCTANT IN THE PRESENT CASE TO DETERMINE THE APPROPRIATE BARGAINING UNIT ON THE BASIS OF A DETERMINATION OF THE MOST APPROPRIATE BARGAINING UNIT. OUR RELUCTANCE STEMS FROM THE FACT THAT THE BOARD HAS FOR A NUMBER OF YEARS FOUND BARGAINING UNITS OF REGISTERED AND GRADUATE NURSES TO BE APPROPRIATE FOR COLLECTIVE BARGAINING IN HOSPITALS. THE APPLICANT HAS RELIED ON THAT PRACTICE NOT ONLY IN TERMS OF THE EXTENT OF ITS ORGANIZATION CAMPAIGN WITH RESPECT TO THE EMPLOYEES OF THE RESPONDENT, BUT ALSO WITH RESPECT TO MEMBERSHIP PROVISIONS IN THE CONSTITUTION OF THE APPLICANT. IN THE LIGHT OF THIS RELIANCE ON THE BOARD'S PREVIOUS DETERMINATIONS WITH RESPECT TO APPROPRIATE BARGAINING UNITS IN HOSPITALS WE ARE RELUCTANT AT THIS STAGE TO SADDLE THE APPLICANT WITH THE BROADER BARGAINING UNIT PROPOSED BY THE RESPONDENT.

11. THE APPLICANT AND THE RESPONDENT HAVE RESOLVED THE REMAINING

DIFFERENCES BETWEEN THEM AS TO THE EXCLUSIONS TO THE BARGAINING UNIT. THIS AGREEMENT IN TURN RESOLVES THE INTEREST OF THE OBJECTING EMPLOYEES WHO APPEARED AT THE FIRST HEARING AND BEFORE THE EXAMINER. HAVING REGARD TO ALL OF THE ABOVE CONSIDERATIONS THE BOARD THEREFORE FURTHER FINDS THAT ALL REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT AT TORONTO, SAVE AND EXCEPT HEAD NURSES, PERSONS ABOVE THE RANK OF HEAD NURSE AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

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15. THE MATTER IS REFERRED TO THE REGISTRAR.

4735-73-M: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. THE W. S. TYLER COMPANY OF CANADA LIMITED (RESPONDENT).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: BURRIS ORMSBY FOR THE APPLICANT; W. K. WINKLER AND J. O. YATES FOR THE RESPONDENT.

DECISION OF THE BOARD: JANUARY 30, 1974.

1. THE APPLICANT HAS REFERRED TO THE BOARD UNDER THE PROVISIONS OF SECTION 95(2) OF THE LABOUR RELATIONS ACT THE QUESTION AS TO WHETHER CERTAIN PERSONS ARE EMPLOYEES OF THE RESPONDENT FOR THE PURPOSES OF THE LABOUR RELATIONS ACT.

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4. THIS APPLICATION WAS FILED ON NOVEMBER 7, 1973. AT THE HEARING ON JANUARY 25, 1974, THE RESPONDENT CONTENDED THAT THE APPLICATION WAS PREMATURE. THE RESPONDENT INFORMED THE BOARD THAT GANDER AND COUNTURIER HAD BEEN APPOINTED TO THEIR NEW POSITIONS ON DECEMBER 1, 1972, AND AUGUST 1, 1973, RESPECTIVELY. THE RESPONDENT MAINTAINED THAT GANDER AND COUTURIER WERE, ALTHOUGH NOT FORMALLY SO DESIGNATED, IN REALITY "TRAINEES" IN THEIR NEW POSITIONS UNTIL JANUARY 1, 1974, AND HAD NOT HAD AN OPPORTUNITY TO ASSUME THEIR FULL DUTIES. THE RESPONDENT SUGGESTED THAT IT MIGHT POSSIBLY BE OPPORTUNE TO FILE A SIMILAR APPLICATION WITH RESPECT TO GANDER AND COUTURIER IN THREE TO SIX MONTHS' TIME. IN EFFECT, THE RESPONDENT WAS ADVOCATING THAT AN INQUIRY BY THE BOARD SHOULD ONLY BE MADE WITH THE APPROVAL OF THE RESPONDENT AT SUCH TIME AS IT, IN ITS SOLE DISCRETION, MIGHT ANNOUNCE TO BE APPROPRIATE. THE BOARD FINDS NO SUBSTANCE TO THIS APPROACH ADVOCATED BY THE RESPONDENT.

5. IT APPEARED TO THE BOARD THAT, IN THE COURSE OF ITS ARGUMENT, THE RESPONDENT WAS CONFUSING THE DUTIES AND RESPONSIBILITIES WHICH PERTAIN TO A JOB CLASSIFICATION WITH THE LEVEL OF PERFORMANCE OR EXPERTISE

ASSOCIATED WITH AN INDIVIDUAL WHO IS THE INCUMBENT OF A PARTICULAR JOB CLASSIFICATION.

6. THE FACT THAT AN INCUMBENT HAS OCCUPIED HIS PRESENT POSITION FOR ONLY A SHORT PERIOD OF TIME HAS NOT PREVENTED THE BOARD FROM MAKING A DETERMINATION OF WHETHER SUCH INCUMBENT IS AN EMPLOYEE FOR THE PURPOSES OF THE LABOUR RELATIONS ACT. SEE, FOR EXAMPLE, THE BORDEN COMPANY LTD. CASE, O.L.R.B. MONTHLY REPORT NOVEMBER 1969, P. 1010.

7. MR. D. K. AYSLEY, EXAMINER, IS AUTHORIZED TO INQUIRE INTO AND REPORT TO THE BOARD ON THE DUTIES AND RESPONSIBILITIES OF DENIS GANDER AND PETER COUTURIER. IN THE CIRCUMSTANCES OF THIS APPLICATION, THE EXAMINER IS DIRECTED TO CONDUCT HIS INQUIRY WITH REFERENCE TO THE PERIOD OF TIME COMMENCING WITH THE DATES GANDER AND COUTURIOR ASSUMED THEIR PRESENT POSITIONS UP TO AND INCLUDING THE DATE OF THIS DECISION.

3987-73-U: JOSEPH PAP (COMPLAINANT) V. INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, LOCAL 523 (RESPONDENT) V. RCA LIMITED, PRESCOTT, ONTARIO (INTERVENER).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS D.B. ARCHER AND W.H. WIGHTMAN.

APPEARANCES AT THE HEARING: ROBIN B. CUMINE AND JOSEPH PAP FOR THE COMPLAINANT; J.A. RYDER AND GERRY VAN RIJT FOR THE RESPONDENT; NO ONE APPEARING FOR THE INTERVENER.

DECISION OF THE BOARD: JANUARY 31, 1974.

1. THIS IS A COMPLAINT UNDER SECTION 79 OF THE LABOUR RELATIONS ACT WHERE THE COMPLAINANT ALLEGES THAT HE HAS BEEN DEALT WITH BY THE RESPONDENT UNION CONTRARY TO THE PROVISIONS OF SECTION 60 OF THE LABOUR RELATIONS ACT. HE ASKS THAT THE UNION PROCESS A GRIEVANCE ON HIS BEHALF.

2. THE GRIEVOR WAS DISCHARGED BY THE COMPANY AND SUBSEQUENTLY THE UNION PRESIDENT FILED A GRIEVANCE ON BEHALF OF THE GRIEVOR. THE UNION PROCESSED THE MATTER THROUGH THE GRIEVANCE PROCEDURE AND THEN TOOK STEPS TO APPOINT A NOMINEE TO A BOARD OF ARBITRATION. THE UNION ALSO WROTE TO ITS COUNSEL TO OBTAIN ADVICE CONCERNING THE GRIEVANCE AND ON APRIL 11, 1973, RECEIVED A TELEGRAM FROM ITS COUNSEL ADVISING THAT "THE GRIEVANCE IS UNLIKELY TO SUCCEED AT ARBITRATION LARGELY ON ACCOUNT OF PREVIOUS DISCIPLINARY MATTERS". COUNSEL FOR THE UNION ALSO WROTE AN OPINION LETTER DATED APRIL 12, 1973, WHICH CONCLUDED AS FOLLOWS: "IN SUMMARY, THEREFORE, IT IS OUR OPINION THAT THE GRIEVANCE IS UNLIKELY TO SUCCEED AT ARBITRATION."

3. PRIOR TO RECEIVING ADVICE FROM ITS COUNSEL THE UNION ALSO HAD RECEIVED CORRESPONDENCE FROM ANOTHER LAWYER CONSULTED BY THE COMPLAINANT, MR. PAP, CONFIRMING THAT MR. PAP WAS PREPARED TO CO-OPERATE IN EVERY WAY

WITH THE PROCESSING OF THE GRIEVANCE, AND ALSO REQUESTING THE UNION TO CONFIRM THAT THE MATTER WOULD PROCEED TO ARBITRATION. MR. PAP'S LAWYER ALSO EXPRESSED SOME CONCERN ABOUT WHETHER THE UNION WAS GOING TO PROCEED WITH THE GRIEVANCE.

4. ON APRIL 24, 1973, AT THE MONTHLY MEETING OF THE UNION, IT WAS MOVED AND SECONDED THAT THE ADVICE OF THE UNION'S COUNSEL BE FOLLOWED AND THAT THE ARBITRATION NOT PROCEED. THAT MOTION WAS CARRIED UNANIMOUSLY AND MINUTES OF THE MEETING WERE FILED AS AN EXHIBIT IN THESE PROCEEDINGS.

5. WHAT IS BOTH RELEVANT AND DISTURBING ABOUT THIS MATTER IS THAT ALTHOUGH THE COMPLAINANT HAD TAKEN STEPS TO CONSULT A LAWYER ABOUT HIS GRIEVANCE, AND ALTHOUGH THAT LAWYER HAD PUT HIMSELF ON RECORD WITH THE UNION, THE UNION AT NO TIME ADVISED EITHER MR. PAP OR HIS LAWYER THAT IT HAD RECEIVED ADVICE OR THAT IT WAS GOING TO DISCUSS MR. PAP'S GRIEVANCE AT ITS MONTHLY MEETING.

6. IN ADDITION, THROUGH CIRCUMSTANCES WHICH ARE NOT RELEVANT, THE USUAL MONTHLY MEETING WAS CHANGED FROM APRIL 17TH TO APRIL 24TH, AND, IN ADDITION TO NOT RECEIVING NOTIFICATION ABOUT THE MONTHLY MEETING AND THAT THE GRIEVANCE WAS TO BE DISCUSSED, NEITHER MR. PAP NOR HIS LAWYER WERE ADVISED OF THE CHANGE IN DATE.

7. IT IS SUGGESTED, PERHAPS, THAT MR. PAP KNEW OR OUGHT TO HAVE KNOWN THROUGH OTHERS THAT THERE WOULD BE A UNION MEETING, AND THAT NOTIFICATION OF THE MEETING IS USUALLY POSTED ON THE BULLETIN BOARD. THERE IS NO DIRECT EVIDENCE THAT MR. PAP WAS IN FACT ADVISED OF THE MEETING, AND, INDEED, THE UNION SHOULD BE AWARE THAT A NOTICE ON A BULLETIN BOARD IN THE COMPANY'S PLANT IS NOT A NOTIFICATION TO A DISCHARGED EMPLOYEE WHO IS NO LONGER WORKING IN THE PLANT.

8. AT THE MEETING IT APPEARS THAT THE RELEVANT FACTS CONCERNING MR. PAP'S GRIEVANCE WERE DISCUSSED AND THAT A VOTE WAS HELD BY THE MEMBERS OF THE UNION IN ATTENDANCE AT THE MEETING AND THAT THE DISPOSITION OF THE GRIEVANCE WAS IN ACCORDANCE WITH THE UNION'S USUAL PRACTICE.

9. MR. RYDER, FOR THE UNION, WHILE NOT EXCUSING THE UNION'S CONDUCT IN THIS MATTER ARGUED QUITE FORCEABLY THAT THERE WAS NO REQUIREMENT OF NATURAL JUSTICE WITH RESPECT TO UNION MEETINGS AND THAT THE UNION WAS FREE TO CONDUCT ITS AFFAIRS AS IT SAW IT. IT IS NOT EITHER THE DESIRE OR THE INTENT OF THIS BOARD TO REGULATE THE INTERNAL ADMINISTRATION OF THE UNION UNDER THE UMBRELLA OF SECTION 60 OF THE LABOUR RELATIONS ACT. WE RECOGNIZE THAT THE PROCEDURES UTILIZED BY UNIONS IN DISPOSING OF GRIEVANCES VARY FROM UNION TO UNION AND AN ATTEMPT BY THIS BOARD TO IMPOSE PROCEDURES ON UNION MEETINGS WOULD CREATE CHAOS IN UNION PROCEDURES.

10. HOWEVER, WE ARE OF THE OPINION THAT WHERE A UNION ADOPTS A PROCEDURE IT MUST ACT PROPERLY WITHIN THE CONFINES OF ITS OWN PROCEDURE AND DO ALL THAT IS REASONABLE WITHIN THOSE LIMITS.

11. IN THIS CASE IT MAY VERY WELL HAVE BEEN THAT HAD MR. PAP OR HIS COUNSEL ATTENDED THE UNION MEETING THEY MIGHT HAVE BEEN ABLE TO MAKE REPRESENTATIONS WHICH WOULD HAVE CHANGED THE MINDS OF THE MEMBERS IN ATTENDANCE AND THEREBY ALLOWED THE GRIEVANCE TO PROCEED TO ARBITRATION. IT IS OBVIOUSLY THE INTENT OF THE UNION IN HOLDING AN OPEN MEETING TO DEAL WITH GRIEVANCES TO PROVIDE A DEMOCRATIC FORUM FOR ITS MEMBERSHIP TO VOICE ITS OPINION.

12. BUT, THE UNION BY ITS OMISSION DENIED MR. PAP AND HIS LAWYER THE RIGHT TO ATTEND THE UNION MEETING. THIS WAS NOT MERE NEGLIGENCE; IT WAS EITHER AN INTENTIONAL ACT OR AN ACT THAT WAS, IN THE CIRCUMSTANCES, SO RECKLESS THAT IT MUST BE CONSIDERED TO BE INTENTIONAL. THE ACT OF THE UNION OFFICIALS WAS THEREFORE TO DENY MR. PAP THE DEMOCRATIC RIGHT TO ATTEND AT A MEETING TO PUT HIS POSITION BEFORE THE MEMBERSHIP AND WITHIN THE LIMITS OF THE UNION'S OWN PROCEDURE IT ACTED ARBITRARILY.

13. NOW ARE WE PREPARED TO FIND THAT MR. PAP WHO WAS REASONABLY KNOWLEDGEABLE ABOUT UNION AFFAIRS SHOULD HAVE ATTENDED OR OUGHT TO HAVE KNOWN THAT HE SHOULD HAVE ATTENDED THE UNION MEETING. THE UNION IS THE BARGAINING AGENT FOR MR. PAP, AND, AS SUCH, HAS A RESPONSIBILITY TOWARDS HIM. AS THE BARGAINING AGENT FOR EMPLOYEES IT HAS BEEN THE TRADITIONAL ROLE OF UNIONS TO ASSIST THE EMPLOYEES. UNION OFFICIALS AND REPRESENTATIVES USUALLY HAVE GREATER KNOWLEDGE THAN THE EMPLOYEES WITH RESPECT TO MATTERS OF COLLECTIVE BARGAINING AND PARTICULARLY WITH RESPECT TO INDIVIDUAL EMPLOYEE'S RELATIONSHIPS WITH THEIR EMPLOYER. BECAUSE OF THIS EXPERTISE AND EXPERIENCE THE UNION HAD AN OBLIGATION TO NOTIFY MR. PAP AND IT IS NOT RELIEVED OF ITS OBLIGATION MERELY BECAUSE MR. PAP SHOULD HAVE KNOWN TO ATTEND THE REGULAR MONTHLY MEETING.

14. THUS, THE UNION'S OWN STANDARDS WHICH PROVIDED EMPLOYEES WITH A DEMOCRATIC FORUM WERE VIOLATED.

15. THE DENIAL OF ACCESS TO THE UNION MEETING, IF NOT ARBITRARY, WAS DISCRIMINATORY, SINCE MR. PAP SHOULD HAVE BEEN ALLOWED THE SAME ACCESS TO THE UNION AS WERE OTHER MEMBERS OF THE UNION. BY ITS ACTIONS THE UNION DENIED MR. PAP THAT ACCESS AND IN THESE CIRCUMSTANCES WE THEREFORE FIND THAT THE UNION IS IN VIOLATION OF SECTION 60 OF THE LABOUR RELATIONS ACT.

16. IT MIGHT BE ARGUED THAT THE CONDUCT OF THE UNION WAS MERELY AN INTERNAL MATTER AND, AS SUCH, WAS NOT PROHIBITED CONDUCT IN THE "REPRESENTATION" OF EMPLOYEES, IN THE SENSE THAT REPRESENTATION CONCERNS THE RELATIONSHIP BETWEEN THE UNION AND THE EMPLOYER AND THAT SECTION 60 IS INTENDED TO DEAL ONLY WITH MATTERS EXTERNAL TO THE UNION. EVEN IF THAT BE SO THE UNION MEETING WAS CONCERNED ABOUT THE RIGHT OF THE EMPLOYEE TO GRIEVE AND TO OBTAIN REDRESS FROM THE EMPLOYER, AND, AS SUCH, WAS AN INTERVENING UNION PROCEDURE WHICH IS PART OF THE TOTAL GRIEVANCE ARBITRATION PROCESS WHICH DIRECTLY CONCERNS THE RELATIONSHIP BETWEEN THE UNION OR THE EMPLOYEE AND THE COMPANY, AND, AS SUCH, FALLS WITHIN THE SCOPE OF THE WORD "REPRESENTATION" IN SECTION 60.

17. HAVING FOUND THAT THE UNION HAS VIOLATED THE ACT THE QUESTION OF RELIEF NOW ARISES. IN THE COURSE OF HEARING THIS COMPLAINT ALL MATTERS DEALING WITH MR. PAP'S DISCHARGE WERE ADDUCED IN EVIDENCE. IN OUR VIEW THIS IS NOT A CASE WHERE THE MATTER SHOULD BE REMITTED TO ARBITRATION NOT ONLY BECAUSE OF THE COST AND TIME INVOLVED, BUT BECAUSE OF THE CLEAR LACK OF MERIT IN THE GRIEVANCE ITSELF. MR. PAP HAD A LONG RECORD WITH THE COMPANY EXTENDING BACK TO 1971 WHEN HE RECEIVED A WRITTEN WARNING FOR BEING OUT OF HIS WORK STATION. IN ADDITION, IN LATE 1972, HE RECEIVED VERBAL WARNINGS WITH RESPECT TO HIS ABSENCE AND HIS PUNCTUALITY AND ALSO RECEIVED WRITTEN WARNINGS IN THAT REGARD. HE ALSO RECEIVED A VERBAL WARNING WITH RESPECT TO THE PERFORMANCE OF HIS DUTIES AND SUBSEQUENTLY IN FEBRUARY 1973, MR. PAP WAS SUSPENDED FOR ONE WEEK. AT THAT TIME HE WAS WARNED THAT IF HIS WORK DID NOT IMPROVE A FURTHER INFRACTION WOULD LEAD TO DISCHARGE. IT IS OUR OPINION, GIVEN THE WORK RECORD OF MR. PAP AND THAT THE COMPANY HAD TAKEN CORRECTIVE DISCIPLINE IN AN ATTEMPT TO HAVE MR. PAP IMPROVE IN HIS PERFORMANCE AS AN EMPLOYEE, THAT A BOARD OF ARBITRATION WOULD ON THE BALANCE OF PROBABILITIES HAVE UPHELD THE DISCHARGE AND NOT INTERFERED WITH THE EXERCISE BY MANAGEMENT OF A DECISION TO DISCHARGE MR. PAP. IN THESE CIRCUMSTANCES WE FIND THAT WE ARE IN AGREEMENT WITH THE OPINION OF COUNSEL FOR THE UNION THAT THERE IS LITTLE LIKELIHOOD THAT MR. PAP WOULD HAVE SUCCEEDED AT ARBITRATION.

18. ACCORDINGLY, IN ALL THE CIRCUMSTANCES, AND BECAUSE THIS WAS SUCH A CLEAR CASE WHERE THE DISCHARGE WOULD BE UPHELD, WE ARE NOT PREPARED TO EITHER REMIT THE MATTER TO ARBITRATION OR TO REINSTATE MR. PAP, ASSUMING THAT WE HAVE THE AUTHORITY TO DO SO.

19. IN THE RESULT WE ARE OF THE VIEW THAT MR. PAP IS TO BE PAID THE SUM OF \$1.00 BY THE UNION BY WAY OF NOMINAL COMPENSATION RESULTING FROM THE UNION'S BREACH OF SECTION 60 OF THE LABOUR RELATIONS ACT.

20. THE COMPLAINT AGAINST THE COMPANY IS DISMISSED IN ITS ENTIRETY.

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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING JANUARY 1974

BARGAINING AGENTS CERTIFIED DURING JANUARY

NO VOTE CONDUCTED

1816-72-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. TRANSPORT PERSONNEL AND PLACEMENT LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT TRANSPORT PERSONNEL AND PLACEMENT LIMITED UNDER CONTRACT AS TRUCK DRIVERS WITH WESTEEL-ROSCO LIMITED IN METROPOLITAN TORONTO SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (118 EMPLOYEES IN THE UNIT). (HAVING CAREFULLY REVIEWED THE TOTALITY OF THE EVIDENCE AS ADDUCED AND TAKING INTO ACCOUNT THE PRINCIPLES ABOVE CITED TOGETHER WITH THE REPRESENTATIONS OF THE PARTIES).

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2845-72-R: TORONTO SHEET METAL AND AIR HANDLING GROUP (APPLICANT) V. SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION #30 (RESPONDENT) V. STAINLESS STEEL EQUIPMENT MANUFACTURERS ET AL (INTERVENER #1) V. RESIDENTIAL SHEET METAL CONTRACTORS ORGANIZATION (INTERVENER #2).

UNIT: "ALL SHEET METAL WORKERS AND SHEET METAL WORKERS APPRENTICES FOR WHOM THE RESPONDENT HAS BARGAINING RIGHTS IN HALTON COUNTY WITH THE EXCEPTION OF THE WEST SIDE OF OAKVILLE CREEK IN TRAFALGAR TOWNSHIP; NELSON AND NASSAWAGEYA TOWNSHIPS; PEEL COUNTY; ERIN TOWNSHIP IN WELLINGTON COUNTY; DUFFERIN COUNTY; SIMCOE COUNTY; METROPOLITAN TORONTO; YORK COUNTY; COUNTY ONTARIO; THE TOWNSHIPS OF CARTWRIGHT AND DARLINGTON IN DURHAM COUNTY; DISTRICT OF MUSKOKA AND THE TOWNSHIPS OF CARLING, FERGUSON, McDougall, McKellar, Christie, Foly, Conger and Humphries IN THE DISTRICT OF PARRY SOUND IN THE PROVINCE OF ONTARIO IN THE INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL SECTOR OF THE CONSTRUCTION INDUSTRY." (NO EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE ABOVE CONSIDERATIONS).

3407-72-R: THE LONDON SHEET METAL CONTRACTORS ASSOCIATION (APPLICANT) V. THE SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION 473 (RESPONDENT).

UNIT: "ALL EMPLOYERS OF SHEET METAL WORKERS AND SHEET METAL WORKERS' APPRENTICES FOR WHOM THE RESPONDENT HAS BARGAINING RIGHTS IN THE JUDICIAL DISTRICT OF LONDON AND THE COUNTIES OF BRUCE, ELGIN, HURON, MIDDLESEX, OXFORD (EXCEPTING THEREFROM THE TOWNSHIPS OF NORTH NORWICH, SOUTH NORWICH, EAST OXFORD, BLENHEIM, BLANDFORD AND EAST ZORRO) AND PERTH, INCLUDING THE CITY OF STRATFORD (EXCLUDING HOWEVER, THE TOWNSHIPS OF SOUTH EASTHOPE, NORTH EASTHOPE, ELLICE, MORNINGTON, ELMA AND WALLACE,) IN THE INDUSTRIAL,

COMMERCIAL AND INSTITUTIONAL SECTOR AND THE RESIDENTIAL SECTOR OF THE CONSTRUCTION INDUSTRY." (NO EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE FOREGOING).

3642-73-R: FEDERATION OF CHILDREN'S AID STAFFS (APPLICANT) V. CATHOLIC CHILDREN'S AID SOCIETY OF METROPOLITAN TORONTO (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL PERSONS EMPLOYED BY THE RESPONDENT IN THE MUNICIPALITY OF METROPOLITAN TORONTO INCLUDING SOCIAL WORKERS, CHILD CARE WORKERS, PSYCHOLOGISTS, PSYCHOMETRISTS, NURSES, COURT WORKERS AND PUTATIVE FATHER WORKERS, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, PERSONS EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, OFFICE AND CLERICAL STAFF, DRIVERS, MAINTENANCE STAFF, HOUSEKEEPERS AND HOMEMAKERS." (193 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR THE PURPOSES OF CLARIFICATION, THE TERM "SUPERVISOR" SHALL BE DEEMED TO INCLUDE UNIT SUPERVISORS, UNIT HEADS AND ASSISTANT SUPERVISORS. THE BOARD NOTED THE FOLLOWING AGREEMENTS OF THE PARTIES: (A) THAT ALL PERSONS CLASSIFIED AS UNIT HEADS AND UNIT SUPERVISORS ARE EMPLOYED IN A MANAGERIAL CAPACITY WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ARE, THEREFORE, INAPPROPRIATE FOR INCLUSION IN THE BARGAINING UNIT. ...)

3877-73-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. ELGIN MOTORS COMPANY LIMITED (RESPONDENT) V. ELGIN MOTORS INDEPENDENT SALESMAN'S ASSOCIATION (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (107 EMPLOYEES IN THE UNIT). (THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE TERM "OFFICE STAFF" INCLUDES THE FOLLOWING CLASSIFICATIONS: WARRANTY CLERK, MAKE-UP CLERK, INVENTORY CONTROL CLERK, WHOLESALE SALES CLERK, TIMEKEEPER, CASHIER, AND THAT THE TERM "SALES STAFF" INCLUDES THE FOLLOWING CLASSIFICATIONS: SERVICE ADVISOR, WHOLESALE PARTS PHONE SALESMAN, WHOLESALE PARTS OUTSIDE SALESMAN, AND THE PARTIES FURTHER AGREED TO THE EXCLUSION OF THE FOLLOWING CLASSIFICATIONS: TRUCK DRIVER AND WHOLESALE PARTS PICKER.).

4115-73-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 880 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. LYTLE ENGINEERING SPECIALTIES LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SARNIA, SAVE AND EXCEPT BRANCH MANAGER, PERSONS ABOVE THE RANK OF BRANCH MANAGER AND OFFICE AND SALES STAFF." (8 EMPLOYEES IN THE UNIT).

4251-73-R: AMALGAMATED CLOTHING WORKERS OF AMERICA (APPLICANT) V. REX-NASH TAILORS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

4252-73-R: AMALGAMATED CLOTHING WORKERS OF AMERICA (APPLICANT) V. J. E. WIEGAND COMPANY LIMITED (RESPONDENT).

- AND -

4253-73-R: AMALGAMATED CLOTHING WORKERS OF AMERICA (APPLICANT) V. SAINT HILL LEVINE UNIFORMS CANADA LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENTS IN METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (16 EMPLOYEES IN THE UNIT).

4547-73-R: HOTEL AND RESTAURANT EMPLOYEES UNION, LOCAL 743 (APPLICANT) V. FOREST PUBLIC HOUSE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE FOREST PUBLIC HOUSE, LOCATED AT 1073 TECUMSEH ROAD EAST IN THE CITY OF WINDSOR, SAVE AND EXCEPT THE MANAGER, PERSONS ABOVE THE RANK OF MANAGER AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK." (21 EMPLOYEES IN THE UNIT).

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4552-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE TOWNSHIP OF WEST LINCOLN (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT SMITHVILLE, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (4 EMPLOYEES IN THE UNIT).

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4562-73-R: NURSES' ASSOCIATION ORILLIA SOLDIERS' MEMORIAL HOSPITAL (APPLICANT) V. ORILLIA SOLDIERS' MEMORIAL HOSPITAL (RESPONDENT).

UNIT #1: "ALL REGISTERED AND GRADUATE NURSES OF THE RESPONDENT AT ORILLIA, ENGAGED IN A NURSING CAPACITY, SAVE AND EXCEPT HEAD NURSES, PERSONS ABOVE THE RANK OF HEAD NURSE AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK." (106 EMPLOYEES IN THE UNIT).

UNIT #2: "ALL REGISTERED AND GRADUATE NURSES OF THE RESPONDENT AT ORILLIA, REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, SAVE AND EXCEPT HEAD NURSES AND PERSONS ABOVE THE RANK OF HEAD NURSE." (33 EMPLOYEES IN THE UNIT).

4641-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. BROCKVILLE GENERAL HOSPITAL (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL LABORATORY TECHNOLOGISTS, LABORATORY TECHNICIANS AND RADIO-

LOGY TECHNICIANS, SAVE AND EXCEPT CHIEF LABORATORY TECHNOLOGIST AND CHIEF RADIOLOGY TECHNICIAN, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS." (23 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

4681-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE TOWNSHIP OF IGNACE (RESPONDENT).

UNIT: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF IGNACE, SAVE AND EXCEPT THE CLERK-TREASURER AND PERSONS ABOVE THE RANK OF CLERK-TREASURER, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (2 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

4707-73-R: SERVICE EMPLOYEES UNION, LOCAL 210 (APPLICANT) V. SOUTH HURON HOSPITAL ASSOCIATION (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT AT EXETER, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, PROFESSIONAL MEDICAL STAFF, GRADUATE NURSES, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIAN, TECHNICAL PERSONNEL, OFFICE AND CLERICAL STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (36 EMPLOYEES IN THE UNIT).

(BARGAINING UNIT #2 - SEE CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE).

4772-73-R: NURSES' ASSOCIATION TORONTO GENERAL HOSPITAL (APPLICANT) V. TORONTO GENERAL HOSPITAL (RESPONDENT) V. CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 2001 (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL REGISTERED NURSES AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT IN A NURSING CAPACITY IN THE CITY OF TORONTO, SAVE AND EXCEPT HEAD NURSES, PERSONS ABOVE THE RANK OF HEAD NURSE, STAFF DEVELOPMENT PERSONNEL, REGISTERED NURSING ASSISTANTS, NON-REGISTERED NURSING ASSISTANTS, OPERATING ROOM TECHNICIANS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND THOSE COVERED BY SUBSISTING COLLECTIVE BARGAINING RELATIONSHIPS." (933 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR THE PURPOSES OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT "HEAD NURSE EMPLOYEE HEALTH CARE UNIT" IS EXCLUDED FROM THE BARGAINING UNIT UNDER THE HEAD NURSE EXCLUSION.).

4778-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. HANMER BUS LINES INC. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT VALL EAST REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER, OFFICE AND CLERICAL STAFF." (41 EMPLOYEES IN THE UNIT).

4797-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE COUNTY OF NORFOLK (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PERSONS EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (44 EMPLOYEES IN THE UNIT). (FOR PURPOSES OF CLARITY THE BOARD NOTED FOR THE REASONS GIVEN HEREIN THAT THOSE PERSONS CLASSIFIED AS "WORKING FOREMAN" AND "MAINTENANCE FOREMAN" ARE EMPLOYEES FOR PURPOSES OF THE ACT. THE BOARD FURTHER NOTES THAT PERSONS ENGAGED BY VIRTUE OF GOVERNMENT SPONSORED WINTER WORKS PROGRAMMES ARE EMPLOYEES FOR PURPOSES OF THE ACT. (SEE; THE REGIONAL MUNICIPALITY OF NIAGARA, HOMES FOR SENIOR CITIZENS CASE OLRB M.R. MAY 1973 257). THE BOARD FURTHER NOTES THAT PERSONS EMPLOYED AS TECHNICAL STAFF INCLUDING SURVEY CREW, RADIO OPERATORS, STOCK-KEEPING STAFF, HOME WORKERS ARE NOT EMPLOYEES INCLUDED IN THE APPROPRIATE UNIT.).

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4800-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. CORPORATION OF THE TOWNSHIP OF SOUTH WALSHINGHAM (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT THE TOWNSHIP OF SOUTH WALSHINGHAM, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMEN, OFFICE STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (4 EMPLOYEES IN THE UNIT).

4802-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE TOWN OF PORT DOVER (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PORT DOVER, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (4 EMPLOYEES IN THE UNIT).

4805-73-R: THE CIVIL SERVICE ASSOCIATION OF ONTARIO (INC.) (APPLICANT) V. THE CHILDREN'S AID SOCIETY OF THE CITY OF LONDON AND THE COUNTY OF MIDDLESEX (KNOWN AS FAMILY AND CHILDREN'S SERVICES OF LONDON AND MIDDLESEX) (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT THE CITY OF LONDON, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, SOCIAL WORKERS, SOCIAL WORK ASSISTANTS, CASE AIDES, SOCIAL WORK DIRECTORS AND SUPERVISORS, GROUP HOME STAFF, SECRETARY TO THE LOCAL DIRECTOR, SECRETARY TO THE DEPARTMENT DIRECTOR, ADMINISTRATIVE ASSISTANT AND RESEARCH ASSISTANT." (30 EMPLOYEES IN THE UNIT). (FOR PURPOSES OF CLARITY THE BOARD NOTED ON AGREEMENT OF THE PARTIES THAT; ... (C) THE UNIT HEREIN FOUND TO BE APPROPRIATE INCLUDES ALL PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD.).

4806-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) v. F. B. SIROTEK LIMITED (RESPONDENT) v. CANADIAN CONSTRUCTION, BUILDING MAINTENANCE AND GENERAL WORKERS' UNION (N.C.C.L.) (INTERVENER).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA - CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

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4809-73-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) v. DUST-BANE ENTERPRISES LIMITED MODERN BUILDING CLEANING DIVISION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT 168 SCOTT STREET, ST. CATHARINES, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE AND SALES STAFF." (9 EMPLOYEES IN THE UNIT).

4810-73-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE CORPORATION OF THE TOWN OF TILLSONBURG (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT THE TOWN OF TILLSONBURG, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (13 EMPLOYEES ON THE UNIT).

4817-73-R: LOCAL 12-L, GRAPHIC ARTS INTERNATIONAL UNION (APPLICANT) v. LITHO FILM SERVICE (RESPONDENT).

UNIT: "ALL LITHOGRAPHERS AND THEIR APPRENTICES IN THE EMPLOY OF THE RESPONDENT AT MARKHAM, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

4836-73-R: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS LOCAL 419 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) v. BEAVER LUMBER COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT COMPANY IN THE TOWN OF VAUGHAN IN THE REGIONAL MUNICIPALITY OF YORK, SAVE AND EXCEPT FOREMEN AND DISPATCHERS, PERSONS ABOVE THE RANK OF FOREMAN AND DISPATCHER, PERSONS EMPLOYED IN ITS RETAIL SALES STORE, OFFICE AND CLERICAL STAFF, SECURITY GUARDS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (35 EMPLOYEES IN THE UNIT). (FOR PURPOSES OF CLARITY, THE BOARD FOUND THAT PERSONS EMPLOYED UNDER THE CLASSIFICATION OF TELEPHONE SALES CLERK FALL UNDER THE CLASSIFICATION OF OFFICE AND CLERICAL STAFF AND HENCE ARE NOT INCLUDED IN THE APPROPRIATE UNIT.).

4839-73-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. BESTVIEW HOLDINGS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS BESTVIEW LODGE NURSING HOME IN THE MUNICIPALITY OF METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, REGISTERED NURSES, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (37 EMPLOYEES IN THE UNIT). (THE BOARD NOTED THE LETTER DATED JANUARY 10, 1974 FILED BY THE RESPONDENT AMENDING THE LIST OF EMPLOYEES INITIALLY FILED HEREIN IN ITS REPLY TO THE INSTANT APPLICATION.).

4844-73-R: SHOPMEN'S LOCAL UNION NO. 734 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS (APPLICANT) V. FERRINGTON FABRICATORS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE CITY OF HAMILTON, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND EMPLOYEES ENGAGED IN FIELD ERECTION INSTALLATION OR CONSTRUCTION WORK." (6 EMPLOYEES IN THE UNIT).

4853-73-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. STANTON PIPES LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, NON-DESTRUCTIVE TESTING TECHNICIAN, LABORATORY STAFF, ASSISTANT TO THE LABORATORY STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND STUDENTS HIRED UNDER A CO-OPERATIVE EDUCATIONAL PROGRAMME." (227 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

4854-73-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL 647 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. CANADIAN FOOD PRODUCTS SALES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED AS TRUCK DRIVERS WORKING AT KINGSTON, ONTARIO SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (5 EMPLOYEES IN THE UNIT).

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4861-73-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. METROPOLITAN STORES OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT TIMMINS, REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, SAVE AND EXCEPT STORE MANAGERS, PERSONS ABOVE THE RANK OF STORE MANAGER, OFFICE STAFF AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT

BETWEEN THE APPLICANT AND THE RESPONDENT." (12 EMPLOYEES IN THE UNIT). (THE BOARD NOTED THE AGREEMENT OF THE PARTIES IN THAT THE RESPONDENT NEITHER EMPLOYS NOR HAS A PAST HISTORY OF EMPLOYING STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD.).

4866-73-R: OPTICAL & PLASTIC TECHNICIANS & ALLIED WORKERS UNION, LOCAL 67 OF U.H.C. & M.W.I.U.-C.L.C. (APPLICANT) V. GEORGE H. NELMS LIMITED (RESPONDENT).

UNIT: "ALL LABORATORY EMPLOYEES OF THE RESPONDENT IN ITS PRESCRIPTION LABORATORY AT OTTAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (8 EMPLOYEES IN THE UNIT).

4868-73-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. CANADIAN MECHANICAL HANDLING SYSTEMS LIMITED (RESPONDENT) V. HOURLY EMPLOYEE RELATIONS COMMITTEE (HERC) (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN BURLINGTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, FIELD SERVICES AND INSTALLATION EMPLOYEES, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (73 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

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4879-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. BROCKVILLE CHEMICAL INDUSTRIES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT IN CORNWALL, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, TECHNICAL EMPLOYEES, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK." (24 EMPLOYEES IN THE UNIT). (FOR THE PURPOSE OF CLARITY THE BOARD NOTED THAT THE RESPONDENT'S PLANT IS LOCATED ON FRONTENAC AVENUE IN CORNWALL. ON AGREEMENT OF THE PARTIES, THE BOARD NOTES THAT PROFESSIONAL ENGINEERS ARE NOT INCLUDED IN THE BARGAINING UNIT.).

4887-73-R: UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA AFL, CIO, CLC (APPLICANT) V. CANADIAN SKATE INDUSTRIES, A DIVISION OF JELINEK SPORTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN ITS WAREHOUSE OPERATIONS IN ITS CANADIAN SKATE INDUSTRIES DIVISION IN OAKVILLE, ONTARIO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (7 EMPLOYEES IN THE UNIT). (ON AGREEMENT OF THE PARTIES).

4897-73-R: LOCAL 12-L, GRAPHIC ARTS INTERNATIONAL UNION (APPLICANT) V. STUBBS AND MASSUE LITHOGRAPHERS LIMITED (RESPONDENT).

UNIT: "ALL LITHOGRAPHERS, THEIR APPRENTICES AND HELPERS, IN THE EMPLOY OF THE RESPONDENT AT WESTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (21 EMPLOYEES IN THE UNIT).

4899-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1081 (APPLICANT) V. POLYSAR LIMITED (BUILDING SYSTEMS DIVISION) (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF WATERLOO EXCEPT PART OF BEVERLY TOWNSHIP ANNEXED BY NORTH DUMFRIES TOWNSHIP, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (10 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

4901-73-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. WESTBURY DEVELOPMENTS (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

4904-73-R: SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION #285 (APPLICANT) V. REXDALE HEATING LIMITED (RESPONDENT).

UNIT: "ALL JOURNEYMEN SHEET METAL WORKERS AND THEIR APPRENTICES IN THE EMPLOY OF THE RESPONDENT AT THE TOWN OF VAUGHAN SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, OFFICE AND SALES STAFF." (12 EMPLOYEES IN THE UNIT).

4905-73-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL 880 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. HURON STEEL PRODUCTS (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT AND WORKING OUT OF WINDSOR, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND THOSE EMPLOYEES COVERED BY SUBSISTING AGREEMENTS." (13 EMPLOYEES IN THE UNIT).

4906-73-R: TEAMSTERS LOCAL UNION 879 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. CANADA SANDPAPER LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED AS STATIONARY ENGINEERS AT ITS PLANT IN PLATTSVILLE, SAVE AND EXCEPT ASSISTANT FOREMEN, PERSONS ABOVE THE RANK OF ASSISTANT FOREMAN, OFFICE, SALES AND SECURITY STAFF AND LABORATORY EMPLOYEES, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND THOSE EMPLOYEES COVERED BY SUBSISTING COLLECTIVE AGREEMENTS." (4 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

4909-73-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. DIAMOND CANA-POWER LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BURLINGTON SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (18 EMPLOYEES IN THE UNIT).

4919-73-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 493 (APPLICANT) V. FARQUHAR CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIPS OF KERNS, HARLEY, CASEY, HUDSON, DYMOND, HARRIS, FIRST-BROOK AND BUCKE, IN THE DISTRICT OF TIMISKAMING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

4925-73-R: THE CIVIL SERVICE ASSOCIATION OF ONTARIO (INC.) (APPLICANT) V. C. DOUGLAS WATSON (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK." (7 EMPLOYEES IN THE UNIT).

4935-73-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. KUHLE CONSTRUCTION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

4936-73-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. FAIRPORT CONSTRUCTION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF

ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

4937-73-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. INTERNATIONAL COOPERAGE COMPANY OF CANADA, LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT MASSEY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (18 EMPLOYEES IN THE UNIT).

4938-73-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. RHODES & MARTIN LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OTTAWA EMPLOYED AS OIL BURNER SERVICEMEN, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND TRUCK DRIVERS WHO ARE NOT ENGAGED AS OIL BURNER SERVICEMEN." (2 EMPLOYEES IN THE UNIT).

4942-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. CORPORATION OF THE TOWNSHIP OF MARCH (RESPONDENT).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT WHO ARE REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE, CLERICAL AND TECHNICAL STAFF." (15 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE, CLERICAL AND TECHNICAL STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK." (10 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

4944-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 1036 (APPLICANT) V. C. A. PITTS ENGINEERING CONSTRUCTION LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THAT PORTION OF THE DISTRICT OF ALGOMA SOUTH OF THE 49TH PARALLEL OF LATITUDE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (12 EMPLOYEES IN THE UNIT).

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4951-73-R: OTTAWA TYPOGRAPHICAL UNION - LOCAL 102 (APPLICANT) V. LE DROIT LTEE (RESPONDENT) V. LE SYNDICAT DES JOURNALISTES D'OTTAWA (INTERVENER #1) V. LOCAL 224, GRAPHIC ARTS INTERNATIONAL UNION (INTERVENER #2) V. CANADIAN UNION OF PUBLIC EMPLOYEES AND ITS LOCAL 1499 (INTERVENER #3).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT ASSISTANT DEPARTMENT MANAGERS, REGIONAL INSPECTORS, ASSISTANT PAY CLERK AND ASSISTANT PERSONNEL DIRECTOR, PERSONS ABOVE THE RANK OF ASSISTANT DEPARTMENT MANAGER, REGIONAL INSPECTOR, ASSISTANT PAY CLERK AND ASSISTANT PERSONNEL DIRECTOR, THE SECRETARY TO THE PERSONNEL DIRECTOR, THE SECRETARY TO THE GENERAL MANAGER, THE EXECUTIVE SECRETARY TO THE DIRECTOR OF THE COMMERCIAL PRINTING DEPARTMENT, SALESMEN, THOSE PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT ENTERED INTO BETWEEN THE RESPONDENT AND INTERVENER #1 EFFECTIVE FROM JANUARY 1, 1973 UNTIL DECEMBER 31, 1974; THOSE PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT ENTERED INTO BETWEEN THE RESPONDENT AND INTERVENER #2 EFFECTIVE FROM JULY 1, 1973 UNTIL JUNE 30, 1975 AND THOSE PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT ENTERED INTO BETWEEN THE RESPONDENT AND INTERVENER #3 EFFECTIVE FROM MAY 1, 1973 UNTIL APRIL 30, 1974." (109 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT AT OTTAWA EMPLOYED IN ITS NEWSPAPER PLANT, SAVE AND EXCEPT NON-WORKING ASSISTANT FOREMEN, THOSE PERSONS ABOVE THE RANK OF NON-WORKING ASSISTANT FOREMAN, PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT ENTERED INTO BETWEEN THE RESPONDENT AND INTERVENER #1 EFFECTIVE FROM JANUARY 1, 1973 UNTIL DECEMBER 31, 1974; THOSE PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT ENTERED INTO BETWEEN THE RESPONDENT AND INTERVENER #2 EFFECTIVE FROM JULY 1, 1973 UNTIL JUNE 30, 1975 AND THOSE PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT ENTERED INTO BETWEEN THE RESPONDENT AND INTERVENER #3 EFFECTIVE FROM MAY 1, 1973 UNTIL APRIL 30, 1974." (8 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

4958-73-R: THE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) v. HURON ACOUSTIC INDUSTRIES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF TUCKERSMITH, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE AND SALES STAFF." (30 EMPLOYEES IN THE UNIT).

4964-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (APPLICANT) v. HARRISON ROCK & TUNNEL COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT).

4970-73-R: CHATHAM CONSTRUCTION WORKERS ASSOCIATION, LOCAL #53, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) v. LESTER CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF ESSEX AND KENT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE FOREGOING).

4973-73-R: INTERNATIONAL ASSOCIATION OF BRIDGE STRUCTURAL AND ORNAMENTAL IRON WORKERS LOCAL 765 (APPLICANT) V. DUFRESNE PILING Co. (1967) LTD. (RESPONDENT).

UNIT: "ALL WELDERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

4991-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. RUSHNELL AMBULANCE SERVICE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT TRENTON ENGAGED IN AMBULANCE SERVICE SAVE AND EXCEPT OFFICE STAFF, SUPERVISOR AND PERSONS ABOVE THE RANK OF SUPERVISOR, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (9 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE REPRESENTATIONS).

4992-73-R: SERVICE EMPLOYEES UNION, LOCAL 204 AFFILIATED WITH S.E.I.U., A.F. OF L., C.I.O., C.L.C. (APPLICANT) V. COLLINGWOOD GENERAL AND MARINE HOSPITAL (RESPONDENT).

UNIT: "ALL REGISTERED NURSES AND GRADUATE NURSES EMPLOYED AT COLLINGWOOD GENERAL AND MARINE HOSPITAL IN COLLINGWOOD, ONTARIO, SAVE AND EXCEPT HEAD NURSES AND SUPERVISORS AND PERSONS ABOVE THE RANK OF HEAD NURSE AND SUPERVISOR, TEACHERS AND PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS." (71 EMPLOYEES IN THE UNIT). (ON AGREEMENT OF THE PARTIES).

4995-73-R: SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL 285 (APPLICANT) V. MALTON SHEET METAL LIMITED (RESPONDENT).

UNIT: "ALL JOURNEYMEN SHEET METAL WORKERS AND THEIR APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND OFFICE AND SALES STAFF." (4 EMPLOYEES IN THE UNIT). (ON AGREEMENT OF THE PARTIES).

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4997-73-R: INTERNATIONAL CHEMICAL WORKERS' UNION (APPLICANT) V. UNION GAS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL REGULAR OFFICE AND CLERICAL EMPLOYEES OF UNION GAS LIMITED AT ITS SERVICE CENTRE AT 10 SURREY STREET AT GUELPH, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, ONE CLERK OR SECRETARY EMPLOYED IN A CONFIDENTIAL CAPACITY, TECHNICIANS, SALES REPRESENTATIVES, REGIONAL CONSUMER SERVICE REPRESENTATIVES, CASUAL EMPLOYEES AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (17 EMPLOYEES

IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR THE PURPOSE OF CLARITY AND HAVING REGARD TO THE PARTICULAR BARGAINING HISTORY EXISTING BETWEEN THE APPLICANT AND THE RESPONDENT, THE BOARD NOTED THE FURTHER AGREEMENT OF THE PARTIES TO THE EFFECT THAT CASUAL EMPLOYEES BE DEFINED AS THOSE WORKING EITHER TWENTY-FOUR HOURS PER WEEK OR LESS, OR NOT REGULARLY EMPLOYED, OR NOT WORKING CONTINUOUSLY FOR MORE THAN FOUR MONTHS.).

4999-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. BELLAI BROTHERS (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA - CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (19 EMPLOYEES IN THE UNIT).

5003-73-R: THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL 804 (APPLICANT) V. H & S ELECTRIC OF WATERLOO LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF WATERLOO EXCEPT PART OF BEVERLY TOWNSHIP ANNEXED BY NORTH DUMFRIES TOWNSHIP, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT).

5005-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. CORPORATION OF THE TOWN OF PERTH (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWN OF PERTH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE, CLERICAL AND TECHNICAL STAFF." (8 EMPLOYEES IN THE UNIT).

5010-73-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 493 (APPLICANT) V. ROMAN PLASTERING & ACOUSTICAL CO. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN THE RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

5013-73-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. AITON PIPEWORK & PROCESS PLANT LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF LENNOX AND ADDINGTON, AND THE COUNTY OF FRONTENAC AND THE TOWNSHIPS OF REAR OF LEEDS AND LANSDOWNE, REAR OF YONGE AND ESCOTT, AND ALL LANDS SOUTH THEREOF IN THE UNITED COUNTIES OF LEEDS AND GRENVILLE, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-

WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."
(2 EMPLOYEES IN THE UNIT).

5019-73-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION 721 (APPLICANT) V. CANADIAN PLASTIC & GLASS ENCLOSURES LIMITED (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

5046-73-R: SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION LOCAL UNION 537 (APPLICANT) V. ED CHRISTENSEN ROOFING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND ENGAGED IN ROOFING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (15 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5055-73-R: BRICKLAYERS' MASONS' AND PLASTERERS INTERNATIONAL UNION OF AMERICA LOCAL #9 BRANTFORD (APPLICANT) V. EASTERN CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL BRICKLAYERS AND BRICKLAYERS' APPRENTICES, STONEMASONS AND STONEMASONS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF BRANT AND NORFOLK, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

5067-73-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. SCHOKBETON QUEBEC INC. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

APPLICATIONS CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

3901-73-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE PETERBOROUGH COUNTY BOARD OF EDUCATION (RESPONDENT).

UNIT: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF PETERBOROUGH, SAVE AND EXCEPT DEPARTMENT HEADS, PERSONS ABOVE THE RANK OF DEPARTMENT HEAD, BUSINESS ASSISTANTS, ONE SECRETARY TO THE BUSINESS ADMINISTRATOR, ONE SECRETARY TO THE DIRECTOR OF EDUCATION, ONE SECRETARY TO THE SECRETARY OF THE BOARD, TWO SECRETARIES TO THE DIRECTOR OF PERSONNEL, PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND LOCAL 1237 CANADIAN UNION OF PUBLIC EMPLOYEES AND TEACHERS AS DEFINED BY THE TEACHERS PROFESSION ACT." (213 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (.. THE BOARD FURTHER NOTES THE AGREEMENT OF THE PARTIES THAT THE BARGAINING UNIT INCLUDES PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND L.I.P. WINTER WORKS PROGRAM PERSONNEL WHO ARE DESIGNATED BY THE RESPONDENT AS LAY ASSISTANTS. THE BOARD FURTHER FINDS THAT SINCE THE DRIVING INSTRUCTOR, PSYCHOMETRIST, LIBRARIAN, SPEECH THERAPIST, INDIAN LIAISON OFFICER AND ATTENDANCE COUNSELLOR ARE INCLUDED IN THE BARGAINING UNIT, THEY WERE ACCORDINGLY ELIGIBLE TO VOTE IN THE PRE-HEARING REPRESENTATION VOTE IN THIS MATTER.).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		127
NUMBER OF PERSONS WHO CAST BALLOTS	118	
BALLOTS SEGREGATED AND NOT COUNTED	4	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	76	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	38	

4717-73-R: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (APPLICANT) V. ST. VINCENT HOSPITAL (RESPONDENT) V. LE SYNDICAT DES SERVICES HOSPITALIERS DU DISTRICT D'OTTAWA (INTERVENER).

UNIT: "ALL LAY EMPLOYEES OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT MEDICAL STAFF, REGISTERED AND GRADUATE NURSES (MALE AND FEMALE), STUDENTS NURSES, PHARMACISTS, DIETITIANS, FOOD TECHNICIANS, CHEF COOK, PHYSIOTHERAPIST, OCCUPATIONAL THERAPISTS, SPEECH THERAPISTS, PSYCHOLOGISTS, LABORATORY AND RADIOLOGY TECHNICIANS, THE ADMINISTRATION AND CLERICAL STAFF, FOREMEN, FOREWOMEN, SUPERVISORS AND PERSONS WITH A RANK EQUIVALENT TO AND SUPERIOR TO FOREWOMEN AND FOREMEN, TEMPORARY EMPLOYEES EMPLOYED FOR LESS THAN THREE MONTHS, PERSONS WORKING IN A CONFIDENTIAL CAPACITY, TELEPHONE OPERATORS, INFORMATION CLERKS, PRINTING STAFF, BUYERS, SECURITY OFFICERS, SOCIAL WORKERS, CASE WORKERS AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796." (500 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	487
NUMBER OF PERSONS WHO CAST BALLOTS	289
NUMBER OF SPOILED BALLOTS	2
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	228
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	59

APPLICATIONS CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

4540-73-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. CORPORATION OF THE TOWN OF SMITHS FALLS (RESPONDENT).

UNIT: "ALL PUBLIC WORKS EMPLOYEES OF THE RESPONDENT AT SMITHS FALLS, SAVE AND EXCEPT ASSISTANT FOREMAN, PERSONS ABOVE THE RANK OF ASSISTANT FOREMAN, OFFICE, CLERICAL AND TECHNICAL STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, AND STUDENT EMPLOYED DURING THE SCHOOL VACATION PERIOD." (31 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	27
NUMBER OF PERSONS WHO CAST BALLOTS	27
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	21
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	5

4587-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE COUNTY OF ONTARIO (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT CLERK, ROAD SUPERINTENDENT, NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, EMPLOYEES OF THE RESPONDENT EMPLOYED IN ITS HOMES FOR THE AGED, OFFICE STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (57 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	43
NUMBER OF PERSONS WHO CAST BALLOTS	37
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	30
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	7

4643-73-R: THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL UNION 527 (APPLICANT) V. L & L INSTALLATIONS LTD. (RESPONDENT).

UNIT: "ALL PLUMBERS AND PLUMBERS' APPRENTICES AND ALL STEAMFITTERS AND STEAMFITTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	3
NUMBER OF PERSONS WHO CAST BALLOTS	3
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	3
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	0

4700-73-R: TEAMSTERS LOCAL 879 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. E & E SEEGRILLER LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES EMPLOYED IN THE SERVICE AND MAINTENANCE DEPARTMENT OF THE RESPONDENT AT KITCHENER, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, EMPLOYEES COVERED BY AGREEMENT BETWEEN THE RESPONDENT AND TEAMSTERS, LOCAL 879, AND EMPLOYEES COVERED BY A RECENT CERTIFICATION OF OPERATING ENGINEERS, LOCAL 793 (BOARD FILE NO. 3451-72-R)". (50 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	41
NUMBER OF PERSONS WHO CAST BALLOTS	39
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	29
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	9

4714-73-R: SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 532 (APPLICANT) V. BEACON HILL LODGES OF CANADA LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN HAMILTON, SAVE AND EXCEPT PROFESSIONAL NURSING STAFF, PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR OR FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (113 EMPLOYEES IN THE UNIT). (FOR THE PURPOSES OF CLARITY, THE BOARD NOTED THAT REGISTERED NURSING ASSISTANTS ARE INCLUDED IN THE BARGAINING UNIT.).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		97
NUMBER OF PERSONS WHO CAST BALLOTS	82	
BALLOTS SEGREGATED AND NOT COUNTED	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	75	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	6	

APPLICATIONS FOR CERTIFICATION DISMISSED DURING JANUARY

No Vote Conducted

3996-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. IMPERIAL ELECTRIC OWNED AND OPERATED BY E. H. SCARABELLI LTD. (RESPONDENT) V. INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 586 (INTERVENER). (2 EMPLOYEES).

4300-73-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (APPLICANT) V. ROBERTSON-IRWIN LIMITED (RESPONDENT). (2 EMPLOYEES).

4558-73-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 1059 (APPLICANT) V. ELGIN CONSTRUCTION COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND CONSTRUCTION LABOURERS ENGAGED IN THE APARTMENT BUILDING AND HOUSING INDUSTRY AND IN THE BUILDING CONSTRUCTION INDUSTRY FOR WHOM THE APPLICANT HAS BARGAINING RIGHTS." (31 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

4598-73-R: TEAMSTERS LOCAL UNION 879 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. SIMPSON-SSEARS LIMITED (RESPONDENT). (85 EMPLOYEES).

4757-73-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. G. TAMBLYN LIMITED (RESPONDENT) V. INTERNATIONAL CHEMICAL WORKERS UNION LOCAL 431 (INTERVENER). (231 EMPLOYEES).

4763-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE EAST PARRY SOUND BOARD OF EDUCATION (RESPONDENT). (42 EMPLOYEES).

4846-73-R: DOWNSVIEW CHRYSLER INDEPENDENT SALESMEN'S ASSOCIATION (APPLICANT) V. DOWNSVIEW CHRYSLER PLYMOUTH (1964) LIMITED (RESPONDENT).

UNIT: "ALL NEW AND USED CAR AND TRUCK SALESMEN EMPLOYED BY THE RESPONDENT

IN THE MUNICIPALITY OF METROPOLITAN TORONTO SAVE AND EXCEPT ASSISTANT SALES MANAGER AND PERSONS ABOVE THE RANK OF ASSISTANT SALES MANAGER." (15 EMPLOYEES IN THE UNIT).

4875-73-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. GOLDLIST CONSTRUCTION LTD. (RESPONDENT). (3 EMPLOYEES).

4896-73-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. WONDER FUELS LIMITED (RESPONDENT). (1 EMPLOYEE).

4910-73-R: RESTAURANT, CAFETERIA AND TAVERN EMPLOYEES UNION, LOCAL 254 OF THE HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION (APPLICANT) V. THE ONTARIO JOCKEY CLUB (RESPONDENT). (115 EMPLOYEES).

4996-73-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 493 (APPLICANT) V. S. McNALLY & SONS LTD. (RESPONDENT). (2 EMPLOYEES).

CERTIFICATION DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

4730-73-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. DECOR WOOD SPECIALTIES LTD. (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (48 EMPLOYEES). (THE BOARD DIRECTED THAT THE BALLOTS BOX CONTAINING ALL THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE BE SEALED AND THE BALLOTS NOT COUNTED PENDING THE FURTHER DIRECTION OF THE BOARD.).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	39
NUMBER OF PERSONS WHO CAST BALLOTS	39
NUMBER OF BALLOTS EXCLUDING SEGREGATED	
BALLOTS CAST BY PERSONS WHOSE NAMES	
APPEAR ON VOTERS' LIST	38
NUMBER OF SEGREGATED BALLOTS CAST BY	
PERSONS WHOSE NAMES APPEAR ON VOTERS'	
LIST	1

BALLOT BOX SEALED

4777-73-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. ATLAS ALLOYS, A DIVISION OF RIO ALGOM MINES LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL WAREHOUSING EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE

SCHOOL VACATION PERIOD." (76 EMPLOYEES). (FOR THE PURPOSE OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT BAY FOREMEN, PRODUCTION CONTROLLERS AND TRUCK CONTROLLER EXERCISE MANAGERIAL FUNCTIONS UNDER SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ARE NOT INCLUDED IN THE VOTING CONSTITUENCY. FOR THE PURPOSE OF CLARITY THE BOARD FURTHER NOTES THE AGREEMENT OF THE PARTIES THAT WAREHOUSE CLERKS ARE INCLUDED IN THE VOTING CONSTITUENCY AND ARE NOT EXCLUDED UNDER THE TERM OFFICE STAFF. THE BOARD DIRECTS THAT THE BALLOT BOX CONTAINING ALL THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE BE SEALED AND THE BALLOTS NOT COUNTED PENDING THE FURTHER DIRECTION OF THE BOARD.).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	77
NUMBER OF PERSONS WHO CAST BALLOTS	73
NUMBER OF SPOILED BALLOTS	2
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	30
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	41

4825-73-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. COLUMBIA RECORDS OF CANADA LTD. (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT 1121 LESLIE STREET, DON MILLS, SAVE AND EXCEPT SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR AND FOREMAN, NURSE, CHIEF ENGINEER, SECURITY GUARDS, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (329 EMPLOYEES). (FOR THE PURPOSES OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT PRESS ROOM SCHEDULER, PROCESS TECHNICIAN, RECORDING TECHNICIANS, AND TECHNICIAN ARE EXCLUDED FROM THE VOTING CONSTITUENCY UNDER THE CLASSIFICATION OF OFFICE STAFF.).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	290
NUMBER OF PERSONS WHO CAST BALLOTS	276
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	128
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	148

4856-73-R: LOCAL UNION #636 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, A.F.L.-C.I.O.-C.L.C. (APPLICANT) V. HYDRO-ELECTRIC COMMISSION OF THE BOROUGH OF EAST YORK (RESPONDENT).

VOTING CONSTITUENCY: "ALL OFFICE EMPLOYEES OF THE RESPONDENT IN THE BOROUGH OF EAST YORK SAVE AND EXCEPT OFFICE SUPERVISORS, PERSONS ABOVE THE RANK OF OFFICE SUPERVISOR, PROFESSIONAL ENGINEERS, SECRETARY TO GENERAL MANAGER, SECRETARY TO CHIEF ENGINEER AND TO SECRETARY-TREASURER,

PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND LOCAL UNION 636 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, A.F.L.-C.I.O.-C.L.C.". (19 EMPLOYEES). (FOR THE PURPOSE OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT OFFICE SUPERVISOR INCLUDES THE ACCOUNTANT, THE COST ACCOUNTING AND PURCHASING MANAGER, BILLING SUPERVISOR AND COMMERCIAL SUPERVISOR. ... THE BOARD DIRECTS THAT THE BALLOT BOX CONTAINING ALL THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE BE SEALED AND THE BALLOTS ARE COUNTED PENDING THE FURTHER DIRECTION OF THE BOARD.).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	17
NUMBER OF PERSONS WHO CAST BALLOTS	13
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	1
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	12

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

4308-73-R: INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES, GLAZIERS & METAL MECHANICS, LOCAL UNION 114 (APPLICANT) V. BELLEVIEW GLASS & MIRROR (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT OR OUT OF BELLEVILLE, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR AND OFFICE AND SALES STAFF." (5 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	5
NUMBER OF PERSONS WHO CAST BALLOTS	5
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	2
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	3

4636-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. CAMPBELLFORD MEMORIAL HOSPITAL (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS HOSPITAL IN CAMPBELLFORD, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANKS OF SUPERVISOR AND FOREMAN, OFFICE AND CLERICAL STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (102 EMPLOYEES IN THE UNIT). (FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT THE TERM TECHNICAL PERSONNEL COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS

PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS.).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	68
NUMBER OF PERSONS WHO CAST BALLOTS	54
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	26
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	28

4648-73-R: BRICKLAYERS, MASONS AND PLASTERERS INTERNATIONAL UNION, LOCAL UNION No. 7 (APPLICANT) v. LEONARD ALESSIO MASONRY CONTRACTOR (RESPONDENT).

UNIT: "ALL BRICKLAYERS AND BRICKLAYERS' APPRENTICES, STONEMASONS AND STONEMASONS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	4
NUMBER OF PERSONS WHO CAST BALLOTS	4
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	2
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	2

4689-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. CAMPBELLFORD MEMORIAL HOSPITAL (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT ITS HOSPITAL IN CAMPBELLFORD, SAVE AND EXCEPT ADMINISTRATOR, THE CONFIDENTIAL SECRETARY TO THE ADMINISTRATOR, OFFICE MANAGER, PERSONS ABOVE THE RANK OF OFFICE MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT." (10 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	9
NUMBER OF PERSONS WHO CAST BALLOTS	8
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	4
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	4

4707-73-R: SERVICE EMPLOYEES UNION, LOCAL 210 (APPLICANT) v. SOUTH HURON HOSPITAL ASSOCIATION (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT AT EXETER, REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, PROFESSIONAL MEDICAL STAFF, GRADUATE NURSES, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIAN, TECHNICAL PERSONNEL OFFICE AND CLERICAL STAFF." (8 EMPLOYEES IN THE UNIT). (FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT THE TERM TECHNICAL PERSONNEL COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS.).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	7
NUMBER OF PERSONS WHO CAST BALLOTS	6
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	1
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	5

(BARGAINING UNIT #1 - SEE APPLICATION UNITS CERTIFIED - NO VOTE CONDUCTED).

4860-73-R: OIL & GAS TECHNICIANS, SERVICE, DOMESTIC AND GENERAL WORKERS' UNION, LOCAL 1267 (APPLICANT) V. TOWN SHOE STORES COMPANY LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT ITS RETAIL STORES IN METROPOLITAN TORONTO, SAVE AND EXCEPT MANAGERS, PERSONS ABOVE THE RANK OF MANAGER, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (63 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS'	
LIST	25
NUMBER OF PERSONS WHO CAST BALLOTS	25
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	3
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	22

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING JANUARY

2347-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 793 (APPLICANT) V. 228095 INVESTMENTS LIMITED (CARRYING ON BUSINESS AS ADENA FORMING) (RESPONDENT). (3 EMPLOYEES).

4803-73-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. SENSENBRENNER HOSPITAL (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (67 EMPLOYEES).

4952-73-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE TOWN OF GANANOQUE, ONTARIO (RESPONDENT). (11 EMPLOYEES).

4954-73-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE GANANOQUE WATERWORKS COMMISSION (RESPONDENT). (6 EMPLOYEES).

4974-73-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. ANTHES EQUIPMENTS LIMITED (RESPONDENT). (12 EMPLOYEES).

4988-73-R: LOCAL UNION 2341 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS A.F.L.-C.I.O.-C.L.C. (APPLICANT) V. PHILIPS ELECTRONICS INDUSTRIES LIMITED (CABINET DIVISION) (RESPONDENT). (266 EMPLOYEES).

5001-73-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 493 (APPLICANT) V. SUDBURY TOWERS (RESPONDENT). (4 EMPLOYEES).

5027-73-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. LINDEN VALLEY FURNITURE LIMITED (RESPONDENT). (20 EMPLOYEES).

5029-73-R: INTERNATIONAL BROTHERHOOD OF POTTERY AND ALLIED WORKERS (APPLICANT) V. CRANE CANADA (RESPONDENT). (27 EMPLOYEES).

5030-73-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. ROBERT MCALPINE LTD. (RESPONDENT). (5 EMPLOYEES).

5058-73-R: FUEL, BUS, LIMOUSINE, PETROLEUM DRIVERS AND ALLIED EMPLOYEES, LOCAL 352 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. SHULLY-MONARCH FUEL OILS LIMITED (RESPONDENT). (16 EMPLOYEES).

5084-73-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE BOARD OF EDUCATION FOR THE BOROUGH OF SCARBOROUGH (RESPONDENT). (250 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED OF

DURING JANUARY

4857-73-R: NORMAN SPENCER MACKAY (APPLICANT) V. TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS, LOCAL UNION NO. 141 (RESPONDENT). (5 EMPLOYEES). (DISMISSED).

4867-73-R: ALDA MENDONCA (APPLICANT) V. THE AMALGAMATED CLOTHING WORKERS OF AMERICA, LOCAL 1058 (RESPONDENT) V. PARIS NECKWEAR CO. LTD. (INTERVENER). (16 EMPLOYEES). (GRANTED).

4869-73-R: WILLIAM MCCROREY (APPLICANT) V. CANADIAN UNION OF OPERATING ENGINEERS LOCAL #101 (RESPONDENT). (3 EMPLOYEES). (GRANTED).

4956-73-R: WILLIAM WOUTERS (APPLICANT) v. CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 1572 (RESPONDENT) v. THE WENTWORTH COUNTY BOARD OF EDUCATION (INTERVENER). (200 EMPLOYEES). (DISMISSED).

APPLICATIONS FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING

JANUARY

4782-73-R: ONTARIO NURSES ASSOCIATION (APPLICANT) v. THE CORPORATION OF THE COUNTY OF HALTON (RESPONDENT) v. NURSES ASSOCIATION HALTON COUNTY HEALTH UNIT (PREDECESSOR TRADE UNION). (GRANTED).

4882-73-R: LOCAL UNION 636, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS A.F.L.-C.I.O.-C.L.C. (APPLICANT) v. THE ELECTRIC LIGHT & WATER COMMISSION OF THE TOWN OF GRAVENHURST (RESPONDENT) v. LOCAL UNION 1647, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS A.F.L.-C.I.O.-C.L.C. (PREDECESSOR TRADE UNION). (GRANTED).

4883-73-R: LOCAL UNION 636, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, A.F.L.-C.I.O.-C.L.C. (APPLICANT) v. THE MIDLAND PUBLIC UTILITIES COMMISSION (RESPONDENT) v. LOCAL UNION 1647, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS A.F.L.-C.I.O.-C.L.C. (PREDECESSOR TRADE UNION). (GRANTED).

4884-73-R: LOCAL UNION 636, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, A.F.L.-C.I.O.-C.L.C. (APPLICANT) v. THE MIDLAND PUBLIC UTILITIES COMMISSION (RESPONDENT) v. LOCAL UNION 1647, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS A.F.L.-C.I.O.-C.L.C. (PREDECESSOR TRADE UNION). (GRANTED).

4885-73-R: LOCAL UNION 636, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS A.F.L.-C.I.O.-C.L.C. (APPLICANT) v. ORILLIA WATER LIGHT AND POWER COMMISSION (RESPONDENT) v. LOCAL UNION 1647, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS A.F.L.-C.I.O.-C.L.C. (PREDECESSOR TRADE UNION). (GRANTED).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING

JANUARY

4128-73-U: BRAMALEA CONSOLIDATED DEVELOPMENTS LIMITED (APPLICANT) v. UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 353, INTERNATIONAL BROTHERHOOD OF PAINTERS & ALLIED TRADES, A. COLAFRANCESCHI, J. T. HOLLINGSWORTH, J. W. BELMORE, W. JACKES, G. CONNAGHAN (RESPONDENT). (WITHDRAWN).

5002-73-U: STONE & WEBSTER CANADA LIMITED (APPLICANT) v. THOSE PERSONS NAMED IN SCHEDULE 'A' ATTACHED HERETO (RESPONDENTS). (GRANTED).

5080-73-U: PIGOTT CONSTRUCTION LIMITED (APPLICANT) V. JERRY BACCARI ET AL (RESPONDENTS). (WITHDRAWN).

5087-73-U: COMSTOCK INTERNATIONAL LTD. (APPLICANT) V. SHEET METAL WORKER'S INTERNATIONAL ASSOCIATION LOCAL UNION No. 30, E. FERGUSON, J. DONELLY, J. BLACK, JAMES LEATHEN, MERV HIGDON, OTTO LOHMANN, JACK ROBITAILLE, ART WHITE (RESPONDENTS). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING JANUARY

3668-73-U: SERVICE EMPLOYEES UNION, LOCAL 204 AFFILIATED WITH A.F. OF L., C.I.O., C.L.C. (APPLICANT) V. BESTVIEW HOLDINGS LIMITED (RESPONDENT). (WITHDRAWN).

4372-73-U: THE CORPORATION OF THE CITY OF HAMILTON (APPLICANT) V. HAMILTON CIVIC EMPLOYEES' UNION LOCAL 5 OF THE CANADIAN UNION OF PUBLIC EMPLOYEES C.L.C. (RESPONDENT). (WITHDRAWN).

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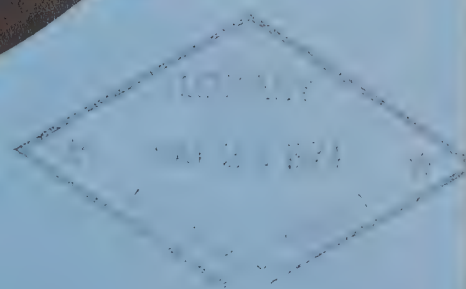
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ONTARIO LABOUR RELATIONS BOARD REPORTS

A MONTHLY SERIES OF DECISIONS FROM THE

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17. Having found that the union has violated the Act the question of relief now arises. In the course of hearing this complaint all matters dealing with Mr. Pap's discharge were adduced in evidence. In our view this is not a case where the matter should be remitted to arbitration not only because of the cost and time involved, but because of the clear lack of merit in the grievance itself. Mr. Pap had a long record with the company extending back to 1971 when he received a written warning for being out of his work station. In addition, in late 1972, he received verbal warnings with respect to his absence and his punctuality and also received written warnings in that regard. He also received a verbal warning with respect to the performance of his duties and subsequently in February 1973, Mr. Pap was suspended for one week. At that time he was warned that if his work did not improve a further infraction would lead to discharge. It is our opinion, given the work record of Mr. Pap and that the company had taken corrective discipline in an attempt to have Mr. Pap improve in his performance as an employee, that a Board of Arbitration would on the balance of probabilities have upheld the discharge and not interfered with the exercise by management of a decision to discharge Mr. Pap. In these circumstances we find that we are in agreement with the opinion of counsel for the union that there is little likelihood that Mr. Pap would have succeeded at arbitration.

18. Accordingly, in all the circumstances, and because this was such a clear case where the discharge would be upheld, we are not prepared to either remit the matter to arbitration or to reinstate Mr. Pap, assuming that we have the authority to do so.

19. In the result we are of the view that Mr. Pap is to be paid the sum of \$1.00 be the union by way of nominal compensation resulting from the union's breach of section 60 of The Labour Relations Act.

20. The complaint against the company is dismissed in its entirety.

4915-73-R: K. Raaflaub (Applicant) v. Printing Specialties and Paper Products Union - Local 466 (Respondent) v. DATA BUSINESS FORMS LIMITED (Intervener).

BEFORE: D. H. Kates, Vice-Chairman, and Board Members H.J.F. Ade and O. Hodges.

APPEARANCES AT THE HEARING: K. Raaflaub and W. Kurnell for the applicant; L. Arnold and E. Hodges for the respondent; W. Phelps, J. Greenhough and C. Annis for the intervener.

DECISION OF VICE-CHAIRMAN D. H. KATES AND BOARD MEMBER H.J.F. ADE:
February 4, 1974.

1. The name "Employees of Data Business Forms Ltd." appearing in the style of cause of this application as the name of the applicant is amended to read: "K. Raaflaub".
2. This is an application made under section 49(2) of The Labour Relations Act for a declaration terminating the bargaining rights of the respondent.
3. The respondent and the intervener are parties to a collective agreement dated January 27, 1972 and whose duration clause provided for automatic renewal upon its expiry after two years. At all material times the parties to the said agreement were engaged in bargaining for the renewal of the same.
4. A faction consisting of a group of employees represented by the respondent under the scope of the said agreement but who were not enrolled as members of the respondent met on several occasions to discuss inter alia the desirability of continued representation by the respondent for collective bargaining purposes. At these meetings the several options available to the employees were canvassed. But to all intents and purposes action was deferred pending disposition of the negotiations between the intervener and respondent. In this regard the central issue at the negotiation sessions was the inclusion into a renewed collective agreement of a union security clause.
5. The meetings of the "non union" faction culminated in a meeting at the Hilton Hotel on December 8, 1973 where the decision was made to hold a vote amongst members of the faction as to whether or not these employees were to join the respondent trade union. At this time a representative of the respondent was informed of the group's intentions.
6. The arrangements for holding the vote on the employer's premises were made in the afternoon of December 12 at "the board room" with the consent of Mr. Annis, a foreman in the employ of the intervener. The evidence indicated that prior to conferring his consent, Mr. Annis took steps to assure himself that the meeting was with the knowledge of the respondent trade union. In this regard approval for the meeting was sought and obtained from a union steward.
7. The meeting was restricted to employees who were not members of the respondent. At that meeting the matter of decertifying the respondent was raised but set aside from consideration with respect to the options to be made available on the ballot. Voters were given the choice of whether or not they wished to join the respondent union. The results of this vote indicated the majority declined to join the respondent union.
8. The next day Mr. Raaflaub and Mr. Kurnell organized the efforts of the employees generally to terminate the respondent's bargaining

rights. There was some evidence to the effect that a representative of another trade union advised the applicant on the requirements of the Act and the appropriate procedures to be pursued in applying to the Board.

9. An undated statement of desire was prepared by Mr. Raaflaub indicating that the undersigned employees of Data Business Forms Limited ...as a majority no longer wished to be represented by the respondent union... (emphasis added by the Board). Some thirty-nine signatures were secured on the 13th and 14th days of December. The evidence indicated that Mr. Raaflaub and Mr. Kurnell were responsible both severally and individually for securing these signatures. A vast majority of the signatures were obtained on the afternoon of the 13th of December at a parking lot adjacent to the respondent's premises during a change in the employees' shifts. The statement was filed with the Board along with the application on December 14, 1973.

10. Counsel for the respondent argues that because the statement of desire filed in support of the application was undated the Board is thereby precluded from making a finding under section 49(3) as to "whether not less than 50 per cent of the employees in the bargaining unit voluntarily signified in writing at such time as is determined under clause j of subsection 2 of section 92 that they no longer wish to be represented by the trade union." The Board in accordance with its practice determined the terminal date, December 28, 1973, to be the date determined under S92(2)(j) for ascertaining the number of employees who has signified their wishes with respect to continued representation by the respondent. The statement as already found was filed with the Board on December 14, 1973. Furthermore, pursuant to subsection 2 of section 48 of the Board's Rules of Procedure oral evidence may be entertained with respect to identification and substantiation of evidence of representation. In this regard, the Board heard evidence and so finds that the necessary signification in writing was obtained for the purposes herein on the 13th and 14th days of December. The Board therefore rejects the counsel's first submission.

11. Counsel further argues that the statement filed is not a "voluntary" reflection of employees wishes for two reasons. Firstly, it is suggested that the meeting of December 12, 1973 at the respondent's premises tainted the application in that it was held with tacit consent of management. That is to say, the employees' views would be affected by the presence of a representative of management at the vicinity of the meeting and in full view of the employees.

12. Secondly, it is suggested that the insertion of the words "majority of employees" in the preamble to the statement of desire would tend, from an objective view, to mislead a reasonable employee into thinking that a majority in fact supported discontinuance of representation by the respondent before the signatures were secured. It would follow therefore that the dubious tactic exhibited would affect the voluntariness of the document.

13. The Board rejects the position of counsel on both grounds. Firstly, the meeting of December 12th was conducted in a proper and candid manner. Approval was sought of the respondent trade union by the employer prior to permitting the employees to use its premises for a meeting. In fact, the holding of a meeting of this nature pertaining to union business is in our opinion contemplated under S38 of the Act. In short, the Board finds nothing untowards in the intervener's conduct on the day in question that would tend to influence the employees' decision to sign the petition. Secondly, the Board is of the opinion that the words "majority of employees" was directed towards this Board and not the employee signatories. In other words, had a majority (or 50%) of employees not signed the document, the issues raised with respect to the instant application would not be before this Board.

14. The Board is satisfied on the basis of all the evidence before it that not less than fifty per cent of the employees of Data Business Forms Limited in the bargaining unit, at the time the application was made, had voluntarily signified in writing that they no longer wish to be represented by the respondent union under section 49(3) of the said Act.

15. The Board directs that a representation vote be taken of the employees of Data Business Forms Limited. Those eligible to vote are all employees of Data Business Forms Limited in the Town of Mississauga, save and except supervisors, persons above the rank of supervisor, office and sales staff and students employed during the school vacation period, on the date hereof who do not voluntarily terminate their employment or who are not discharged for cause between the date hereof and the date the vote is taken.

16. Voters will be asked to indicate whether or not they wish to be represented by the respondent in their employment relations with Data Business Forms Limited.

17. The matter is referred to the Registrar.

DECISION OF BOARD MEMBER O. HODGES: February 4, 1974.

1. I concur.

2. In my opinion most of those who signed the termination petition would have been influenced by the assumption of support by a "majority of employees", as expressed in the preamble. However, in the light of contemporary tolerance for exaggerated advertising propaganda in the market-place, undesirable though that practice may be, I cannot dismiss the petition on the ground that those who signed the petition did not know what they were doing, although I think the unproven claim of a majority was misleading.

3. The meeting in the Board Room of the Company during working hours and without loss of pay was not a union meeting. It was a meeting of non-union employees at which a vote was conducted to determine whether they would join the incumbent union. No member of management was present at any time, although those present would obviously understand that the accommodation could not have been available without management permission. Were these circumstances to prevail with respect to a petition situation in an application under S7 or S51 of the Act, the Board would in my view be required to treat similar facts as indicating undue management influence.

4. The freedom inherent in S3 of the Act, is a matter to be considered in the present case because of the evidence indicating a possible interest in organizing by another union, which took the form of advice to the applicant concerning his procedure at the meeting in the company Board Room.

5. There being no evidence of animus concerning trade unions on the part of the employer intervener, I therefore concur in the finding of the majority.

4993-73-R: Teamsters Union Local 938 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. CENTEAST AUTO TERMINALS LTD. (Respondent) v. Canadian Brotherhood of Railway, Transport and General Workers (Intervener) v. Group of Employees (Objectors).

BEFORE: D. H. Kates, Vice-Chairman, and Board Members J. D. Bell and P. J. O'Keefe.

APPEARANCES AT THE HEARING: I. J. Thomson and H. Shelkie for the applicant; R. A. Werry, R. Bouffard and J. B. Clement for the respondent; R. Beckwith for the intervener; G. Brault for the objectors.

DECISION OF THE BOARD: February 6, 1974.

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2. This is an application for certification for a group of the respondent's employees at Vaughan Township.

3. The respondent raised the preliminary question of the jurisdictional competence of this Board to entertain the instant application. It is asserted that the application is more appropriately conceived pursuant to the provisions of The Canada Labour Code.

4. Mr. R. Bouffard, President of the respondent company was called upon to give evidence with respect to the respondent's operations. The

respondent is an incorporated company engaged in the business of operating automobile terminal services in the Provinces of Quebec and Ontario. In Ontario, two terminals are in operation. One is located in Agincourt in the Municipality of Metropolitan Toronto; and, the other, at Concorde in The Township of Vaughan. The instant application pertains to employees employed by the respondent at "The Concorde Terminal".

5. Operations at the Concorde Terminal commenced in November, 1973. The respondent entered into an arrangement with Canadian National Railways (hereinafter referred to as "CNR") whereby it undertook general duties of unloading storing and releasing automobiles transported by CNR rail from points of origin throughout Canada to its terminal in Concorde. It appears that the main source of CNR's business with respect to the transcontinental transport of automobiles pertained to foreign manufacturers. Thus CNR would assume the task of transporting automobiles by rail from the port cities of Halifax and Vancouver and would ultimately deposit a particular shipment at the Concorde Terminal. There are three sets of track set aside by CNR in the yard for this very purpose.

6. At the point of origination a bill of lading known as a "weigh bill" is prepared containing the names, description, serial numbers, consignee and other relevant information with respect to a particular shipment. The automobiles are loaded for carriage on three tiered rail cars known as "tri-levels". Once a shipment arrives at the terminal yard CNR employees would direct the "tri-levels" to a compound set aside for the unloading and storing of the cargo. At this point CNR employees cease to have any further contact with the cargo.

7. CNR retains responsibility for the cargo until the consignee (or a carrier retained to transport the cargo further) acknowledges receipt of the shipment. Nevertheless, the respondent is obliged to save CNR harmless from any loss, whether through negligence or otherwise, while the cargo is under its control. An insurance policy was negotiated for this very contingency.

8. At all material times the respondent in discharging its services operates on premises owned by CNR and uses facilities and equipment provided by CNR. For example, CNR provides the portable ramp (valued at approximately \$35,000.00) that adjusts to the various heights necessary to unload automobiles from the "tri-levels". In addition, storage and dock facilities are provided until the cargo is released.

9. The respondent's duties commence once the "tri-level" is brought to rest at the site of the compound. The "weigh bill" containing the information with respect to the particular shipment is handed to the respondent. Employees in accordance with the directions provided would drive the automobiles from the "tri-level" down the portable ramp into the compound. The consignee is then advised of the arrival of the shipment. Once advised, the consignee himself would pick up the cargo

or could advise the respondent to release the goods to a car dealer or a transport carrier. In any event, once the shipment is receipted and released the weigh bill is then returned to CNR officials.

10. While providing this service the respondent's employees are under the exclusive control of the respondent company. No phase of the operation is under the supervision of CNR personnel. Direct involvement by CNR employees terminates once the services of Centeast begins.

11. Counsel for the respondent argues that the services provided by the respondent under its arrangement with CNR is both an integral part of and necessarily incidental to the operation of a "railway" as defined under the exceptions to "local works and undertakings" pursuant to clause (a) of subsection (10) of section 92 of The British North America Act (1867) 30-31 Vict C3. In support of this submission counsel relies heavily on the facts and principles cited in The Eastern Stevedoring Co. Ltd. case (Reference Re Validity of the Industrial Relations and Disputes Investigation Act Can.) and Applicability in respect of certain employees of Eastern Stevedoring Co. Ltd. (1955) 3 D.L.R. 721 (S.C.C.).

12. The representative of the applicant strongly asserted that the respondent's operations were within the jurisdiction of the Province. The concern expressed by the applicant should the Board rule otherwise pertained to the issues of drawing the limits of federal jurisdiction should the circumstances of the situation before the Board be characterized as an integral part of and necessarily incidental to the operation of railway transport. In short, to what extent is the presumption of Provincial jurisdiction to be consumed by the test expressed by Estey J. in The Eastern Stevedoring Case?

13. The simple answer to the concerns expressed by the applicant is that each case must be decided on its own peculiar facts and circumstances. The issue before the Board relates to its jurisdictional competence to entertain the instant application. This is a matter collateral to its obligations to administer the Labour Relations Act. In no way is it to be presumed that a Board determination is conclusive on matters of such import as the constitutional basis of this Province to regulate the collective bargaining relationship of employer and trade union as the representative of employees. It is only in terms of a step antecedent to the overall process of entertaining an application for certification that the Board makes the initial decision. [see; Armstrong Transport and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, Local 938 64 CLLC ¶15,492 (HC) per Haines J.]. And in so doing, the Board must deal with the issue as it conceives the facts and the state of the law to be.

14. In addition, the representative of the applicant points to a decision of this Board dated June 12, 1973 wherein a certificate issued the intervener herein for a unit of employees at the respondent's Agincourt operations. (see; The Centeast Auto Terminals Ltd. Case File No.

3810-73-R). This Board notes counsel's attempt to distinguish the respondent's operations at Agincourt from the Concorde operation to justify the Board's jurisdictional competence in that case. Nevertheless for purposes of the present application the Board takes notice that no argument with respect to the constitutional competence of the Board to proceed in that case was raised by the parties. In fact all matters decided therein were based on agreement. This Board therefore does not feel persuaded one way or the other by the decision adverted to.

15. The test cited in The Eastern Stevedoring Case and applied to the operations of stevedoring in the loading and unloading of ships engaged in international shipping pertained to activities whose dominant aspect was Navigation and Shipping under S91(10) of The B.N.A. Act. The heading of "Navigation and Shipping" as the cases evolved indicated... "that there is no doubt that the power to control navigation and shipping conferred on the Dominion by S91 is to be widely construed." (see; Montreal City v Montreal Harbour Commissioners [1926] A.C. 299 at p. 313).

16. The relevant provisions of The B.N.A. Act that counsel for the respondent relies upon to persuade the Board that the operations described herein are under the jurisdiction of Parliament is S92(10)(a). That is to say, the interconnecting operations of transcontinental railway transport of which the unloading of cargo is an integral part falls outside the competence of this Board. Yet the tests applied with respect to the two provisions of the B.N.A. Act discussed herein differ even though they may very well pertain to the same type of interprovincial activity. In re Tank Truck Transport Ltd. (1961) 25 D.L.R. (2d) affirmed 36 D.L.R. (2d) 636 (CA) that court indicated;

"Once there is an operation or undertaking capable of connecting provinces then the test under S92(10)(a) is one of extent while the factor determining jurisdiction in The Underwater Gas Developers Case (ie S91(10)) is primarily the kind or nature of the activity".

17. In this Board's opinion the factor of extent is the measure of the constitutional character of the respondent's undertaking insofar as it relates to the process of servicing interprovincial railway transport. And in this regard the Board heard evidence to the effect that the unloading, storage and releasing of automobiles transported from points outside of Ontario were services provided exclusively by the respondent. Furthermore there was no precedent for this service in that the process was just introduced in November, 1973. And of even greater consequence was the evidence that the service was not needed for the transport of automobiles manufactured totally within the limits of the Province.

18. This Board therefore finds that the process of unloading automobiles at the CNR yard at Concorde is "in fact one and indivisible" with railway transport. (see; A.G. of Ontario v Winner (1954) A.C. 541 at p. 582). In so finding, we are satisfied that the respondent's operations are both an integral part of and necessarily incidental to the railway operations of CNR. It therefore follows that the labour relations aspects of the respondent's undertaking are more appropriately regulated under the provisions of The Canada Labour Code.

19. In light of the above finding, the Board finds it is without jurisdiction to entertain this application and terminates the proceedings forthwith.

4870-73-U: Rudolf Kahlert (Complainant) v. LOCAL P416 CANADIAN FOOD AND ALLIED WORKERS (Respondent).

BEFORE: G. W. Reed, Q.C., Chairman, and Board Members H.J.F. Ade and E. Boyer.

DECISION OF THE BOARD: February 11, 1974.

1. This is a complaint under section 79 of the Labour Relations Act in which the complainant alleges that he has been dealt with by the respondent trade union contrary to section 60 of the Act. A Field Officer was appointed to inquire into this matter and he has now submitted his report.

2. It appears from the report that the respondent trade union has a collective agreement with Robin Hood Multifoods Limited covering its Port Colborne plant. The complainant is covered by this collective agreement. The complainant filed a grievance under the collective agreement which the respondent union refused to carry past the third stage of the grievance procedure.

3. It further appears from the report that the respondent trade union was certified to cover employees at the Port Colborne plant by the Canada Labour Relations Board in April of 1959. The plant in question is a flour mill. This Board has held in similar circumstances it is without jurisdiction to deal with flour mills since under the Canada Wheat Board Act such mills have been declared to be a work for the general advantage of Canada and thus fall under Federal jurisdiction. See Supersweet Formula Feeds, Division of Robin Hood Flour Mills Limited, O.L.R.B. Monthly Reports, June, 1965, p. 212. The Board has also held that this lack of jurisdiction applies to proceedings under section 79 of the Labour Relations Act. See Canadian Pacific Railways and Brotherhood of Railway Carmen of the United States and Canada Local 855, [1972] OLRB Rep, page 287.

4. Having regard to section 46 of the Board's Rules of Procedure, the complaint in our opinion does not make out a prima facie case for the remedy requested and it is therefore dismissed.

4443-73-M: JOHN INGLIS CO. LIMITED (Applicant) v. The United Steelworkers of America, Local 2900 (Respondent).

BEFORE: Rory F. Egan, Vice-Chairman, and Board Members J. D. Bell and P. J. O'Keefe.

APPEARANCES AT THE HEARING: Michael Gordon and James Adams for the applicant; Martin Levinson and John Fitzpatrick for the respondent.

DECISION OF THE BOARD: February 8, 1974.

1. This is an application for relief under section 37(1)(2) and (3) of The Labour Relations Act. It is brought with respect to the arbitration clause in the current collective agreement between the applicant and the respondent which is alleged to be inadequate with respect to the arbitration of complaints emanating from the company against the union.

2. Article 30 of the collective agreement sets out the arbitration procedure, the relevant portions of which are the following:

30:01 Matters referred to arbitration will be submitted to a single arbitrator selected from the following list.

1. O. Shime
2. J.F.W. Weatherill
3. Prof. Simmons
4. D. O'Shea

This list may be enlarged or changed by mutual agreement.

30:05 The arbitrator shall not have the authority to alter, modify or amend any part of this Agreement, nor make any decisions inconsistent with the provisions thereof, but shall have authority within the above limitations to dispose of grievances by such arrangements as in his opinion are just and equitable.

30:06 The proceedings of the arbitration will be expedited by the parties hereto, and the decisions of the arbitrator will be final and binding on both parties.

3. It is common ground that the arbitration provisions set out above are adequate for the proper disposition of grievances of individual employees and of grievances launched by the union. The Board is consequently not concerned with that aspect of the collective agreement. The grievance procedure does not make provision for the launching of a grievance by the company.

4. The relevant portions of section 37 of the Act are the following:

37.-(1) Every collective agreement shall provide for the final and binding settlement by arbitration, without stoppage of work, of all differences between the parties arising from the interpretation, application, administration or alleged violation of the agreement, including any question as to whether a matter is arbitrable.

(2) If a collective agreement does not contain such a provision as is mentioned in subsection 1, it shall be deemed to contain the following provision:

Where a difference arises between the parties relating to the interpretation, application or administration of this agreement, including any question as to whether a matter is arbitrable, or where an allegation is made that this agreement has been violated, either of the parties may, after exhausting any grievance procedure established by this agreement, notify the other party in writing of its desire to submit the difference or allegation to arbitration and the notice shall contain the name of the first party's appointee to an arbitration board. The recipient of the notice shall within five days inform the other party of the name of its appointee to the arbitration board. The two appointees so selected shall, within five days of the appointment of the second of them, appoint a third person who shall be the chairman. If the recipient of the notice fails to appoint an arbitrator, or if the two appointees fail to agree upon a chairman within the time limited, the appointment shall be made by the Minister of Labour for Ontario upon the request of either party. The arbitration board shall hear and determine the difference or

allegation and shall issue a decision and the decision is final and binding upon the parties and upon any employee or employer affected by it. The decision of a majority is the decision of the arbitration board, but if there is no majority the decision of the chairman governs.

(3) If, in the opinion of the Board, any part of the arbitration provision, including the method of appointment of the arbitrator or arbitration board, is inadequate, or if the provision set out in subsection 2 is alleged by either party to be unsuitable, the Board may, on the request of either party, modify the provision so long as it conforms with subsection 1, but, until so modified, the arbitration provision in the collective agreement or in subsection 2, as the case may be, applies.

5. It is clear from a reading of section 37 that it is the arbitration provisions and not the grievance procedure or lack thereof that are the prime concern of the section. The fact, therefore, that the collective agreement under review makes no reference in the grievance procedure to company grievances would not of itself in normal circumstances necessarily affect the efficacy of the arbitration provision. In the instant case, however, the parties have elected to treat the arbitration proceedings as part of the grievance procedure so that the matters referred to arbitration under Article 30 are only those that have gone through the earlier steps of the grievance procedure. The absence of provision for company grievances thus limits the arbitration procedure under this agreement and renders the arbitration clause inadequate in so far as that type of complaint is concerned.

6. The Board, therefore, pursuant to the provisions of section 37 of the Act, declares that for the purpose of adequately providing for the final and binding settlement of disputes originated by complaint of the company, the collective agreement shall be deemed to contain the following provision in addition to the arbitration provisions already contained therein:

Where a difference arises between the parties relating to the interpretation, application or administration of this agreement, including any question as to whether a matter is arbitrable, or where an allegation is made that this agreement has been violated, either of the parties may, after exhausting any grievance procedure established by this agreement, notify the other party in writing of its desire to submit the difference or allegation to arbitration and the notice shall contain the name

of the first party's appointee to an arbitration board. The recipient of the notice shall within five days inform the other party of the name of its appointee to the arbitration board. The two appointees so selected shall, within five days of the appointment of the second of them, appoint a third person who shall be the chairman. If the recipient of the notice fails to appoint an arbitrator, or if the two appointees fail to agree upon a chairman within the time limited, the appointment shall be made by the Minister of Labour for Ontario upon the request of either party. The arbitration board shall hear and determine the difference or allegation and shall issue a decision and the decision is final and binding upon the parties and upon any employee or employer affected by it. The decision of a majority is the decision of the arbitration board, but if there is no majority the decision of the chairman governs.

7. The grievance procedure which under this agreement includes the arbitration provisions relating to employee and union grievances remain unaffected by this decision.

4572-73-R: Bill Roubos (Applicant) v. Canadian Food and Allied Workers Local Union 633, Chartered by The Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC (Respondent).

- and -

4588-73-R: Clara St. Pierre (Applicant) v. Canadian Food and Allied Workers Local Union 175, Chartered by the Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC (Respondent).

- and -

4589-73-R: Jack Arnold Meisner (Applicant) v. Canadian Food and Allied Workers Local Union 175, Chartered by the Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC (Respondent).

RE: JOSEPH KELLER'S I.G.A. FOODLINER

BEFORE: Rory F. Egan, Vice-Chairman, and Board Members O. Hodges and W. H. Wightman.

APPEARANCES AT THE HEARING: Bill Roubos, Clara St. Pierre and Jack A. Meisner for the applicants; J. A. Ryder, H. R. Harrison and W. E. Hanley for the respondents, Kelly E. Hansen and Joseph Keller for Joseph Keller's I.G.A. Foodliner.

DECISION OF RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBER W. H. WIGHTMAN:
February 11, 1974.

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3. These are three applications for termination having to do with three bargaining units of employees of Joseph Keller's I.G.A. Foodliner at Chatham for which the respondents have been the bargaining agents. By agreement of the parties the applications were heard together.

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5. The single issue in the words of counsel for the respondent is whether the petitions were voluntarily signed or whether Meisner held sufficient managerial powers to affect the employment relationship or to lead employees to believe he spoke for management in the crucial period when the petitions were signed.

6. It is common ground that the collective agreements provide that the classification of assistant manager is one falling within the scope of the bargaining units. The question of Meisner's at the time when the petitions were originated and signed arises out of facts set out below.

7. Joseph Keller, the owner of the store, went on vacation in Spain commencing on or about September 16, 1973 and returned to Chatham on or about October 9, 1973. He was absent, therefore, during the period when the petitions were originated, signed and filed with the Board.

8. Keller stated that before leaving on holidays he gave Meisner the keys to the store and told him to take care of the opening up and closing down of the store and to look after the ordering. Keller laid out the work schedules for the four weeks during which he was to be absent. He gave Meisner no authority or instructions with respect to managing the employees and stated that Meisner's functions were confined to those outlined above. The handling of cash and the cashiers was left to the head cashier who also dealt with part-time employees. The head cashier is also a member of the bargaining unit.

9. There is nothing in the evidence to indicate that Meisner took any action during Keller's absence which would indicate that he was managing the employees or the business other than that to which reference has already been made. The question is, however, whether the employees would have had reason to believe that he was "management" or was carrying out the instructions of Keller in organizing the termination applications. We might say parenthetically that there is nothing in the evidence before the Board to indicate that Keller had anything to do with the applications in any way. That, however, is not the point with which we are here directly concerned. The point is whether the employees might have been induced to sign petitions because of a reasonable belief that management was behind the move and that their consequent signing was not a voluntary act.

10. Incidentally, this was not the first occasion upon which Meisner had been required to act in a similar fashion and on the previous occasions he had been paid a \$25.00 bonus for added responsibilities pursuant to the collective agreement.

11. A factor which was raised in the evidence and which must be given some consideration in attempting to determine whether the signing of the petitions was a voluntary act is the employees' view of the manner in which the respondents became the bargaining agents for the employees concerned. The evidence established that the respondents had been the bargaining agents for the employees of a previous operator of a store in the premises with which we are here concerned. That business had closed down and some eight months later Joseph Keller commenced operations of a similar nature. Keller, on commencing to operate the store, was advised to write to the respondent unions. He did so and in effect requested the unions to present a collective agreement for signature. The agreements contain union security clauses requiring employees to become and remain members of the unions and to pay union dues. It is abundantly clear from the evidence that this procedure on the part of the employer was resented by the employees. None of the employees with whom we are here concerned had been employed by the previous operator and none had been members of the respondent unions. The evidence indicates that the employees, in the words of the witness, felt that "the contract had been pushed on us in the first place" and they had been given no opportunity to express their feelings in the matter.
12. The evidence is that the employees had talked about terminating the bargaining rights of or "getting rid of" the respondents for a considerable period of time prior to the present applications and that the idea had been bandied about prior to Meisner's employment with Keller. The evidence further shows that the lack of a chance to decide if they wanted the union or not had long been a source of discontent among the employees and was not inspired by Meisner. There was, in fact, evidence that some of the employees thought Meisner was "in charge of the union".
13. In all of the above circumstances and since the petitions were opposed to the actions of the management in bringing in the union without reference to the employees, it is plain that no reasonable employee would believe that Meisner was acting as or on behalf of management in promoting the petitions.
14. The Board is satisfied on the particular facts of this case, as revealed by the totality of the evidence, that the employees felt that Keller had forced the agreement upon them and that their act of signing the petitions, far from being the result of influence by management, was a reaction against both the respondents and Keller and that the employees consequently accepted Meisner in his capacity as a fellow member of the bargaining units.
15. Having regard to the evidence adduced in support of the applications and the representations of the parties, the Board is satisfied on the basis of the evidence before it that not less than fifty per cent of the employees of Joseph Keller's I.G.A. Foodliner in the bargaining units, at the time the applications were made, had voluntarily signified in writing that they no longer wish to be represented by the respondent unions

on October 22, 1973, the terminal date fixed for these applications and the date which the Board determines, under section 92(2)(j) of The Labour Relations Act, to be the time for the purpose of ascertaining the number of persons who have voluntarily signified in writing that they no longer wish to be represented by the respondent unions under section 49(3) of the said Act.

16. The Board directs that a representation vote be taken of the employees of Joseph Keller's I.G.A. Foodliner. Those eligible to vote are--(a) All meat department employees of Joseph Keller's I.G.A. Foodliner, at Chatham; (b) All persons regularly employed for not more than 24 hours per week and students employed during the school vacation period, by the Chatham I.G.A. Foodliner Store 101 at Chatham, save and except the Store Manager and persons above the rank of Store Manager; (c) All employees of Joseph Keller's I.G.A. Foodliner, at Chatham, save and except the meat department employees, store manager, persons above the rank of store manager, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period on the date hereof who do not voluntarily terminate their employment or who are not discharged for cause between the date hereof and the date the vote is taken.

17. Voters in each bargaining unit will be asked to indicate whether or not they wish to be represented by their respective respondent in their employment relations with Joseph Keller's I.G.A. Foodliner.

18. The matter is referred to the Registrar.

DECISION OF BOARD MEMBER OLIVER HODGES: February 11, 1974.

I dissent.

1. The presumption of the majority of this panel of the Board expressed in paragraph 13 of their decision "that no reasonable employee would believe that Meisner was acting as or on behalf of management in promoting the petitions" is not my view. Considering all of the evidence and in the circumstances of this case it is my opinion that employees signed these petitions in deference to the managerial authority held by Meisner in the absence of Keller.

2. Reasonable employees in my view would see Meisner as acting for management and thus would have signed the petitions under duress and not as a voluntary act to defeat representation by the incumbent union at the time when bargaining for a new collective agreement was due to begin. I therefore find that the petitions are not voluntary and must be dismissed.

4172-73-R: United Brotherhood of Carpenters and Joiners of America, Local Union 93 (Applicant) v. DEL ZOTTO ENTERPRISES LIMITED (Respondent).

-and -

4187-73-R: United Brotherhood of Carpenters and Joiners of America, Local Union 93 (Applicant) v. SARDINA INVESTMENTS LIMITED (Respondent).

- and -

4188-73-R: United Brotherhood of Carpenters and Joiners of America, Local Union 93 (Applicant) v. DEMIRO CONSTRUCTION LIMITED (Respondent).

BEFORE: D.E. Franks, Vice-Chairman, and Board Members H.J.F. Ade and E. Boyer.

APPEARANCES AT THE HEARING: John P. Nelligan and Jacques A. Emond for the applicant; Michael G. Horan and B. Mortson for the respondents.

DECISION OF THE BOARD: February 6, 1974.

1. The Board directs that the applications in File No. 4172-73-R, File No. 4187-73-R and File No. 4188-73-R, be and they are hereby consolidated. The name of the respondents in the consolidated application shall be the names of the three respondents in the individual applications being consolidated.

2. On October 9, 1973, the Board issued a decision in this matter appointing an examiner to conduct certain inquiries. That decision arose out of an agreement to adjourn a hearing of the Board on October 3, 1973, which agreement was based on a further agreement of the parties to the appointment of an examiner. The decision appointing the examiner on the terms of reference agreed to by the parties did not, unfortunately, record our reluctance to deal with the matters which arise in this case by that form of procedure. The examiner issued a report dated January 7, 1974, and this matter was set for hearing on January 23, 1974.

3. This case involves a request by the applicant to have the Board apply the provisions of section 1(1)(4) of the Act with respect to the respondent employers. In addition, each of the three respondents has taken the position that each respondent has no employees. At the hearing in this matter it became apparent that the Board could not proceed properly with the matters raised by the applicant on the basis of the examiner's report. Consequently, the Board took the extraordinary step of revoking in toto the report of the examiner. In taking this extraordinary step we do not intend any criticism of either the examiner's report or the manner in which the examiner conducted his inquiry. Such an extraordinary move is a result of our concern about the ability to deal with section 1(4) matters through the procedure of appointing a Board examiner. It is apparent that certain types of evidence which an applicant may wish to adduce in support of a claim for the application in section 1(4) is evidence which cannot adequately be dealt with in an examiner's report. We feel constrained to add at this point that the inquiry which the parties agreed the examiner should conduct unfortunately aggravated these evidentiary problems.

4. The examiner's report will therefore be completely disregarded and the Registrar is directed to list this matter for hearing at which point the Board will hear all outstanding issues. We point out that to

date the Board has heard no evidence in this matter and has only heard the representations of the applicant and the respondent on what are preliminary issues.

5. The applicant has requested that two parties be added to these proceedings. In view of the foregoing decision with respect to the examiner's report we are prepared to entertain this request by the applicant. Accordingly, the Board further directs the Registrar to serve Elru Payroll Company Limited and Jantro Corporation Limited with a view to their being added parties respondent to this application.

4336-73-R: Retail Clerks International Association (Applicant) v. G. TAMBLYN LIMITED (Respondent).

BEFORE: Rory F. Egan, Vice-Chairman, and Board Members J. D. Bell and P. J. O'Keeffe.

DECISION OF THE BOARD: February 13, 1974.

1. In its decision dated October 1, 1973, the Board appointed an Examiner to inquire into the lists filed by the respondent.

2. By letter dated December 28, 1973, counsel for the respondent submitted that the Examiner had proceeded to inquire into the employment status of certain people and that this ought not to be permitted in the circumstances.

3. The respondent also submitted that a question of credibility had arisen and that the Board ought therefore to remove the matter from the Examiner and hear evidence under oath.

4. The Board has considered the written representations of the parties on both matters raised by the respondent. We propose to deal firstly with the question of the extend of the Examiner's inquiry. While an inquiry into the lists filed by a respondent may not necessarily involve a question of employment status, circumstances do arise where it becomes an essential ingredient for the proper settlement of the lists. The circumstances present in this case are such that a proper decision with respect to the lists necessarily involves an inquiry into the employment status of the persons for whom the applicant seeks bargaining rights.

5. As to the matter of credibility, the Board is of the view that where the conflict involves a difference of opinion, it does not necessarily raise a question of credibility. Honest belief can founder on the facts of a situation without impugning the veracity of the person expounding the mistaken belief.

6. In the instant case, the dispute is subject to resolution by objective evidence adduced or to be adduced before the Examiner. The effect to be given the evidence may then be argued before the Board.

7. In the result, the Board refers the matter back to the Examiner for continuation and conclusion of the examination, including the question of the employment status of persons named by the applicant as being relevant to the application.

2687-72-R: LABOUR BUREAU OF THE PAINTING AND DECORATING CONTRACTORS OF ONTARIO (Applicant) v. Ontario Council of the International Brotherhood of Painters and Allied Trades (Respondent).

BEFORE: D.E. Franks, Vice-Chairman, and Board Members H.J.F. Ade and E. Boyer.

DECISION OF THE BOARD: February 14, 1974.

1. In its decision dated June 22, 1973, the Board directed the respondent Council of Trade Unions to file with the Board the by-laws vesting the power of the Local in the Council. In compliance with this the respondent filed with the Board certified copies of the minutes of the various Locals which read in a standard form as follows:

THIS IS TO CERTIFY that a special meeting
of.....held on the.....day of....., 1971,
at.....the following resolution was approved
by the membership:
MOVED by.....and seconded by.....
and carried by a majority vote that.....
hereby delegates, transfers and assigns unto
the Ontario Council of Painters and Allied Trades
all existing bargaining rights vested in the said
Local and such authority as shall be necessary to
enable the Ontario Council of Painters and Allied
Trades to discharge the responsibilities of a
bargaining agent on behalf of the members of
the said Local and without limiting the
generality of the foregoing, to enable the

Council to represent members of the said Local
 in proceedings under the Ontario Labour
 Relations Act to negotiate and enter into
 collective agreements and to do all matters set
 out in the Constitution and By-Laws of the
 Ontario Council of Painters and Allied Trades
 as the same may be amended from time to time,....

AND IT IS FURTHER CERTIFIED that the above
 resolution is duly recorded in the minutes of
 the said meeting.

.....

President

.....

Recording Secretary

The filing is made on behalf of the following Locals at the following locations:

Local 114	Kingston
Local 200	Ottawa
Local 205	Hamilton
Local 407	Niagara Falls
Local 557	Toronto
Local 864	Toronto
Local 1003	Toronto
Local 1080	Toronto
Local 1494	Windsor
Local 1590	Sarnia
Local 1671	Thunder Bay
Local 1783	London
Local 1824	Kitchener
Local 1832	Oshawa
Local 1891	Toronto
Local 1904	Sudbury
Local 1919	Sault Ste. Marie

The respondent also filed as directed its Constitution and By-Laws dated August 4, 1971.

2. These documents relate to the identity of the respondent as a Council of Trade Unions. There is no doubt that a Council of Trade Unions may be a respondent in an application for accreditation. Our concern at this point is to determine the proper identity of the agency that bargains on behalf of the employees of the employers that the applicant in this case seeks to represent. We are concerned that although the various Locals of the Painters Union may have transferred to the Council of Trade Unions all bargaining rights vested in each Local that there may have been applications for certification by Locals of the Painters Union and there may be collective agreements between employers of the various Locals notwithstanding the by-laws filed with the Board. We feel that this is a matter on which the individual employers affected by this application have a right to make representations.

3. It is also apparent from the filing by the respondent in the present case that there may be a problem concerning the appropriate geographic area in determining the unit of employers. The problem is whether or not the operative geographic area for each employer bound by the collective agreement on which this application is based is the whole of the Province of Ontario. This is not a matter on which we have yet heard the representations of the parties and again, we are of the view that this is a matter with respect to which each employer can make additional representations.

4. Because these situations are not contemplated by the present Form 67, Notice to Employers, and Form 68, Employer Filing, the Board directs the Registrar when serving the individual employers affected by this application with notice of this application to ask the individual employer for representations on these additional matters:

"Who is the bargaining agent for the employees (Painters) affected by this application?"

"Do you have any additional representations with respect to who is the bargaining agent for the employees affected by this application?"

"Do you have any representations on the geographic area of the collective agreement referred to in this application?"

5. The examiner appointed in this matter having now reported to the Board that the applicant and the respondent have tentatively agreed to the list of employers following the examiner's meeting, the Board therefore directs the Registrar to fix an employer date for this application in accordance with section 77 of the Board's Rules of Procedure and to list the matter for hearing.

6. The Registrar shall serve all employers listed on the list of employers, as tentatively agreed to by the applicant and the respondent, with notice of the application and of hearing.

4243-73-M: Warehousemen and Miscellaneous Drivers, Local 419 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. DISPOSAL SERVICES LIMITED (Respondent).

BEFORE: D. H. Kates, Vice-Chairman, and Board Members H. J. F. Ade and E. Boyer.

DECISION OF THE BOARD:

February 14, 1974.

1. This is an application under Section 95(2) of the Act for a Board determination as to whether Mr. Antonio Da Ros is a guard within the meaning of section 11 of the Act.

2. The Board is prepared to accept as a summary of the evidence contained in the examiner's report the contents of the letter January 21, 1974, from the solicitor for the respondent.

3. Based on that summary the Board makes the following findings;

- (1) Mr. Da Ros's primary duties involve the patrolling and watching of the landfill site to prevent prowlers from entering the site and having access to the machinery and buildings. He is solely responsible for insuring that the company's buildings and equipment are protected during the night hours.
- (2) If prowlers or trespassers are observed on the company's premises, Mr. Da Ros directs them to vacate. If they do not comply, he then contacts the local police for assistance.
- (3) Mr. Da Ros's duties also involve watching for fires or other potential damage to the company property. If fires occur on the premises, he attempts to extinguish them. If he is unable to do so, he contacts the local fire department for assistance.
- (4) Mr. Da Ros must assure himself that trucks coming on to the premises are expected and once advised and only then would he unlock the gates to the property.

4. The Board has compared the duties and responsibilities of Mr. Da Ros in the instant case with the duties and responsibilities exercised by the watchman in the George A. Crain and Sons Ltd. Case 63 CLLC ¶16,291 at p. 1209;

"David's chief duties are, (1) to look for and report fires; (2) to control the admission of persons onto the project property by requiring them to identify themselves by badge or otherwise and to record particulars of their entry on, and departure from the property in a log book; (3) to look out for unauthorized persons coming on the property and if necessary to report them to the police and his superiors if they fail to comply with his warnings or orders to leave the property; and (4) to prevent damage or theft of property on the project by warning and ordering offenders or would-be offenders to desist and by reporting and identifying them to the police and his superiors.

5. The Board went on to say that the duties and responsibilities of all the watchmen examined could be summed up (at p1211) "as primarily that of watching, warning and reporting with virtually no monitorial or admonitory authority, actual or potential, over other employees." (emphasis added by the Board).

6. In a like manner there is not a title of evidence in the Examiner's Report or the summary submitted by the solicitor for the respondent to suggest that Mr. Da Ros duties transcended that of merely protecting the property of the employer. He exercises no authority with respect to other employees of the respondent. The essence of the functions of a security guard that justifies treating them separate and apart from other employees in the bargaining unit is the potential conflict that may arise between the duties of the guard and their loyalties to fellow employees. Here, having regard to the evidence, no such conflict would arise in that the duties of a watchman do not entail monitorial authority over other employees in the employ of the employer. It follows therefore that Mr. Da Ros is not a guard within the meaning of Section 11 of the Act.

4877-73-R: International Molders & Allied Workers Union (Applicant) v. HOBART BROTHERS OF CANADA LIMITED (Respondent) v. Employee (Objector).

BEFORE: Rory F. Egan, Vice-Chairman, and Board Members J. D. Bell and A. Main.

APPEARANCES AT THE HEARING: Ted Wohl for the applicant; S. R. Ellis for the respondent; W. H. Walker for the objector.

DECISION OF RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBER A. MAIN:
February 15, 1974.

. . .

2. There was filed with the Board a statement of objection or petition in opposition to the application. The Board inquired into the circumstances surrounding the origination and circulation of the petition and the manner in which the signatures thereto were obtained.

3. The evidence was that the respondent called a meeting of employees to discuss wages and working condtions. The meeting was held on plant property during working hours without loss of earnings and at a time when the union's organizational drive was in progress. The meeting resulted in the formation of an employees' committee.

4. The employees' committee arranged for the holding of a vote in the plant on the question as to whether the employees wanted to be represented by the applicant. The vote was held during working hours. After voting, the ballots were taken to the company's office and were counted there in the presence of management. The result of the vote was entered in ink on a statement which had been entirely typewritten in the management office with the exception of the vote count. This notice was then posted on the company notice board for the information of the employees.

5. The petition was prepared by the objector's lawyer subsequent to the posting of the Notice of Application for Certification provided by the Board. The petition was signed in the respondent's cafeteria during working hours by employees who in turn left their respective work stations without seeking leave of their supervision and without question or hindrance by any one in management. This forbearance by management can only have been interpreted by the employees as silent acquiescence in the use of its premises and time by the committee.

6. In the circumstances outlined above, it is plain that the refusal of any employee to at least go to the cafeteria would have been a clear betrayal of such an employee's position with respect to the petition as indeed would have been a refusal to sign once an employee had yielded to the virtually compulsory attendence in the cafeteria.

7. A further matter bearing upon the question of the voluntariness of the employees who signed the petition is the fact that the president of the employees' committee conducted the ballot and then brought the ballots to the management offices for counting. He organized the petition and supervised its signing in the cafeteria. All of these activities, to the knowledge of the employees, took place during regular working hours. This indulgence by the respondent could only lead to the inference that management was at least co-operating with the president in his activities. The presence of the latter in the cafeteria during the signing of the petition was consequently a further factor inhibiting freedom of expression

8. It may well be that the incidents reviewed above, if taken singly, could not be said to affect the employees in their decision with respect to the petition. When, however, the evidence is viewed in its totality, it becomes obvious that in view of the involvement of management, however innocent, in the events leading up to the signing of the petition and the circumstances set out in paragraph 6 above, under which the signing took place, the latter document cannot be accepted as expressive of the true wishes of the employees.

9. In the result, the Board finds that the petition does not weaken the evidence of membership filed by the applicant so as to require the holding of a representation vote.

10. The Board finds that all employees of the respondent in Woodstock, save and except foremen, persons above the rank of foreman, office and sales staff, and students employed during the school vacation period, constitute a unit of employees of the respondent appropriate for collective bargaining.

. . .

12. A certificate will issue to the applicant.

DECISION OF BOARD MEMBER J. D. BELL: February 15, 1974.

I do not agree with the findings of the majority of the Board.

The incidents taken collectively or singly could not be said to affect the employees in their decision with respect to the petition. However, the question whether their document is expressive of the true wishes of the employees can be readily decided by a representation vote.

The opportunity to cast a ballot in a representation vote should not be denied these employees because there might be an inference that the management was involved because it did not interfere with the signing of the petition.

I would direct that a representation vote be held.

4881-73-M: MAN OF ARAN LTD. (Employer) v. Local 280 of the International Beverage Dispensers' & Bartenders' Union of the Hotel and Restaurant Employees and Bartenders' International Union, A.F. of L., C.I.O., C.L.C. (Trade Union).

BEFORE: R. A. Furness, Vice-Chairman, and Board Members F. W. Murray and P. J. O'Keeffe.

APPEARANCES AT THE HEARING: C. Sydney Frost, Q.C. for the employer; J. A. Ryder and Frank Cortese for the trade union.

DECISION OF THE BOARD:

February 18, 1974.

1. The Minister has referred to the Board, pursuant to section 96 of The Labour Relations Act, the question as to whether the Minister has the authority under section 37(4) of The Labour Relations Act to appoint an employer nominee to a board of arbitration.
2. The basis facts concerning this reference are not in dispute. On March 15, 1972, the Toronto Hotel Association and the trade union entered into a collective agreement which became effective on November 1, 1971, and continued in effect until October 31, 1974. Subsequent to March 15, 1972, Mintz Tavern, in an undated agreement, agreed to be bound by the collective agreement.
3. On November 10, 1972, Mintz Tavern sold its business to the employer which closed the tavern in order to make renovations to the premises. On March 7, 1973, the trade union filed a grievance with the employer. At the time the grievance was filed, the tavern had not yet re-opened for business. In a letter dated March 22, 1973, the trade union requested the appointment of a nominee to a board of arbitration on behalf of the employer. The Minister made this reference to the Board on December 6, 1973. The employer opened for business on March 10, 1973.
4. On April 24, 1973, the employer filed an application with the Board in which it sought a declaration that it was not bound by any collective agreement with the trade union in connection with its business at 248-250 Spadina Avenue, Toronto. In a decision dated June 6, 1973, the Board found that the restaurant and tavern business carried on by the employer was substantially changed in character from the restaurant and tavern business previously carried on by the predecessor employer and that the employer was entitled to the relief provided by section 55(5) of The Labour Relations Act. In addition, the Board held that the application was timely because the time limits referred to in section 55(5), as applicable to the employer, commenced to run from the time that the employer became a successor employer, i.e., from the time the employer employed persons who would fall within the bargaining unit defined in the collective agreement. The Board concluded by declaring that the trade union no longer represented the employees of the employer at Toronto for whom it was therefore the bargaining agent. See the Man of Aran Ltd. case, [1973] OLRB Rep. 313.
5. The parties addressed extensive argument on the aspect of the decision of the Board dated June 6, 1973, which stated that the time limits referred to in section 55(5) of the Act ran from the time that the employer became a successor employer, i.e., from the time that the employer employed persons who would fall within the bargaining unit defined in the collective agreement.
6. The trade union argued that the finding referred to in paragraph five herein was either, a finding on a collateral issue and that such

finding was wrong in law and is not a proper interpretation of section 55(2) of the Act, or, is not res judicata of the issue raised in this application. The employer argued that the bargaining rights of the trade union had been terminated by the Board and that it never came within the provisions of section 55(2). The employer further argued that the issue raised in this application is res judicata and that at the time the grievance was filed on March 7, 1972, there was no collective agreement between it and the trade union. Accordingly, the employer reasoned, the trade union had no right to request arbitration, and, consequently, there was no authority in the Minister to appoint a nominee.

7. In our opinion, the Board in its decision dated June 6, 1973, decided that for the purpose of determining the time limits referred to in section 55(5) the time commenced to run from the time that the employer employed persons who would fall within the bargaining unit defined in the collective agreement. The decision dated June 6, 1973, did not decide that the employer did not become bound by the collective agreement prior to March 10, 1973.

8. The Board, in this application, is not called upon to determine the issue which was determined by the Board in its decision dated June 6, 1973. The Board in that decision addressed itself to two questions. Firstly, was there a sale of a business? And, secondly, was the employer making a timely application for relief under section 55(5) of the Act? Further in that decision, the Board did not determine for the purposes of section 55(2) of the Act when the employer became bound by the collective agreement.

9. The Board therefore finds that its decision dated June 6, 1973, is not res judicata of the present matter before the Board. In the light of this finding, it is not necessary for the Board to consider the other arguments raised by the trade union.

10. Section 55(2) of The Labour Relations Act states:

"Where an employer who is bound by or is a party to a collective agreement with a trade union or council of trade unions sells his business, the person to whom the business has been sold is, until the Board otherwise declares, bound by the collective agreement as if he had been a party thereto and, where an employer sells his business while an application for certification or termination of bargaining rights to which he is a party is before the Board, the person to whom the business has been sold is, until the Board otherwise declares, the employer

for the purposes of the application as if he were named as the employer in the application."

11. The employer argued that the words "until the Board otherwise declares" in section 55(2) means "unless the Board otherwise declares". In support of this argument the employer relied upon a portion of the decision of Laskin, J.A. (as he was then) in Regina ex rel. Amalgamated Meatcutters and Butcher Workmen of North America, Local 633 v. Kitchener Food Market Limited et al. 66 CLLC ¶14,136, at p. 501-2, where he stated:

".... I am constrained, however, to make some observations on the obvious inquiry that arises from these reasons, which is this: Upon whom or upon what body does the task fall to make the initial decision on whether there has been a sale or not? In general, the Ontario Labour Relations Act confides to the Board initial determination of questions arising in the administration thereof. The successor union provisions of section 47 make this clear where rights thereunder are claimed, but this is not true with respect to the successor employer provisions of section 47a, so far as concerns the question whether existing bargaining rights continue against an alleged successor employer. Other questions that may arise on the assumed continuation of bargaining rights are confided to the Board, as is evident from section 47a(3), (4), (5), but not the basic question above-mentioned.

It may well be that the Legislature assumed that it was enough to say in section 47a(2) that bargaining rights continue in the event of a sale, that the limitation therein through the words "unless the Board otherwise directs" was ample enough to vest the Board with power to determine whether there was a sale to support the continuation. I need not decide this, and content myself with pointing out that the procedure ordained by the Act for assertion of bargaining rights against an alleged successor employer could result in by-passing the Board

altogether, and leaving it to the Minister and to the Courts to make the basic determination that there has been a sale for purposes of section 47a."

Section 55, as amended, is the present day counterpart of section 47a which was in force at the time of the Kitchener Food Market Limited case, supra.

12. The employer argued that Laskin, J.A., used the words "unless the Board otherwise directs" and in so doing, decided that "until the Board otherwise directs" in section 55(2) is to be interpreted as "unless the Board otherwise directs". A careful reading of the decision of Laskin, J.A. clearly shows that the portion thereof quoted in paragraph eleven herein is obiter dicta and that his Lordship, it is respectfully suggested, erred in his intended quotation from section 47a(2) of The Labour Relations Act. We find no merit in the interpretation urged on the Board by the employer. Section 55(2) plainly states that "... the person to whom the business has been sold is, until the Board otherwise declares, bound by the collective agreement as if he had been a party thereto" (emphasis added).

13. A sale of a business from Mintz Tavern to the employer has occurred, and, having regard to the provisions of section 55(2) of the Act, the employer became bound by the collective agreement (which was binding upon Mintz Tavern) between the trade union and the Toronto Hotel Association, from November 10, 1972 (the date of the sale of the business) until June 6, 1973 (the date of the decision of the Board which declared that the trade union no longer represented the employees of the employer in Toronto for whom it was theretofore the bargaining agent).

14. The trade union has filed its grievance with the employer during the period in which the collective agreement was binding upon them. The trade union has named its nominee to a board of arbitration and the employer has failed to name its nominee to this board of arbitration. There has been a failure by the employer to take the step necessary to make possible the constitution of a board of arbitration.

15. Having regard to the foregoing, the Board finds that the Minister has the authority under section 37(4) of The Labour Relations Act to appoint an employer nominee to a board of arbitration. The Board reports to the Minister that the decision of the Board on the question referred to it is "yes".

SUPPLEMENTARY REASONS OF BOARD MEMBER F. W. MURRAY: February 18, 1974.

While I agree with the opinion of the Board in this matter, namely, that the answer to the question as to the Minister's authority under section 37(4) of The Labour Relations Act to appoint an employer nominee is, "yes"; having regard to the provisions of section 55(2)

of the Act, I am not at all convinced in the light of all the evidence that such appointment at this time, will advance the purposes of the Act.

5150-73-U: HONEYWELL CONTROLS LIMITED (Applicant) v. Stan Bany, et al. (Respondents).

BEFORE: Rory F. Egan, Vice-Chairman, and Board Members E. Boyer and F. W. Murray.

APPEARANCES AT THE HEARING: R. J. Drmaj, Donald W. Ware and R. E. Sprague for the applicant; Henry Malcolm Pollit, M. St. Eloi and W. Howard for the respondents.

DECISION OF THE BOARD: February 19, 1974.

1. This is an application for a declaration that certain named employees of the applicant engaged in an unlawful strike commencing on February 4, 1974.
2. The application makes no specific reference to the section of the Act upon which the applicant relies in support of its case.
3. The relevant portions of section 63 of The Labour Relations Act provide:

63.-(1) Where a collective agreement is in operation, no employee bound by the agreement shall strike and no employer bound by the agreement shall lock out such an employee.

(2) Where no collective agreement is in operation, no employee shall strike and no employer shall lock out an employee until the Minister has appointed a conciliation officer or a mediator under this Act and,

- (a) seven days have elapsed after the Minister has released to the parties the report of a conciliation board or mediator; or
- (b) fourteen days have elapsed after the Minister has released to the parties a notice that he does not consider it advisable to appoint a conciliation board,

as the case may be.

4. Section 1(1)(m) of the Act defines a strike in the following terms:

1.-(1) In this Act,

(m) "strike" includes a cessation of work, a refusal to work or to continue to work by employees in combination or in concert or in accordance with a common understanding, or a slow-down or other concerted activity on the part of employees designed to restrict or limit output;

5. The statement of facts relied upon by the applicant is as follows:

(a) The Applicant, as a member of the Pneumatic Control Systems Council, is a party to and bound by the Collective Agreement with the United Association of Journeymen and Apprentices of The Plumbing and Pipe Fitting Industry of the United States and Canada dated May 7, 1969. There has been no request for or appointment of a Conciliation Officer or Mediator under The Labour Relations Act and the conciliation process has not been invoked or completed.

(b) The persons named in Schedule "A" hereto being employees of the Applicant and covered by such Collective Agreement went on strike commencing February 4th, 1974, by failing to report for work at the commencement of their regularly scheduled shifts thereon or to perform their regularly assigned duties on such day or at any time thereafter or from time to time thereafter, without the approval or consent of the Applicant, Honeywell Controls Limited, and have since continued on strike.

6. The collective agreement referred to in the statement of facts is one between The Pneumatic Control Systems Council, hereinafter called the "Council", on behalf of employer members, and the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, (AFL-CIO & CLC), hereinafter called the "Association".

7. It is clear from a reading of paragraph (b) of the statement of facts that the applicant, in maintaining that the employees concerned are covered by the collective agreement, is relying upon section 63(1) of the Act as one basis for its claim for the relief it seeks.

8. The termination provisions of the collective agreement read as follows:

ARTICLE XIX
Duration and Termination

62. This is the complete Agreement superseding all prior Agreements, and shall be in full force and effect from June 15, 1969 to November 30, 1971, and from year to year thereafter unless notice of termination or modification is given in writing by either party to the other party, sixty (60) days prior to each anniversary date of November 30.

9. It is common ground that notice was given in accordance with the above provision and that bargaining took place with a view to modification of the agreement. That being the case, the collective agreement was not in effect on February 4, 1974 when the alleged strike commenced. It follows then that the action complained of does not constitute a violation of section 63(1).

10. The applicant, however, argued that even if the collective agreement had ceased to be in operation on February 4, 1974, the respondents were caught by the provisions of section 63(2) since it was agreed that no conciliation officer had been appointed by the Minister at the time the alleged strike commenced. As may be seen, the absence of conciliation proceedings is referred to in the statement of material facts relied upon by the applicant and is obviously an allegation based upon the provisions of section 63(2) of the Act. In the opinion of the Board, the statement of facts is sufficiently precise to indicate with reasonable clarity that both subsections of section 63 were being invoked by the applicant.

11. Before going into the details of the occurrences of February 4, 1974, we propose to set out some of the facts which form the background to the activities of that date.

12. The negotiations which followed the notice referred to in paragraph 9 above broke down on September 20, 1972. Following this occurrence, the Director of Canadian Affairs of the Association, Mr. St. Eloi, notified all local unions that there was no longer a national agreement and that each local was to proceed to attempt to obtain collective agreements within their respective jurisdictions. The local with which we are here concerned is Local 46.

13. Mr. St. Eloi followed the above advice with a letter to the various locals dealing with their jurisdiction to enter into collective agreements. The letter to Local 46 reads as follows:

This will confirm our previous advice to you that the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada has transferred its jurisdiction and bargaining rights to U.A. Local 46 with respect to employees of Honeywell Controls Ltd., Powers Regulator Co. of Canada Ltd., Robertshaw Controls (Canada) Ltd., Barber Colman of Canada Ltd. and Johnson Controls Limited, working in or out of the U.A. Local 46 geographical area of jurisdiction.

The U.A. of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada is the bargaining agent for all employees of Honeywell Controls Ltd., Powers Regulator Co. of Canada Ltd., Robertshaw Controls (Canada) Ltd., Barber Colman of Canada Ltd., and Johnson Controls Limited respectively who are Journeymen and Apprentices employed by each such employer in Plumbing and Pipe Fitting work in the Pneumatic Control Systems Industry as more particularly described in Articles 1 and 11 of a Collective Agreement between the U.A. of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada and the Pneumatic Control Systems Council on behalf of the above mentioned companies on the other.

Effective as of March 1, 1973 the United Association has transferred and hereby confirms such transfer of its jurisdiction over, and bargaining rights for, the above described employees of each of the above named employers to U.A. Local 46 with respect to employees working in or out of the geographical area described as follows:

The judicial district of York, that portion of Ontario County lying West of the Pickering Whitby Townships Line, Peel County, that portion of Halton County lying South of Highway 401 and East of the 7th line and Dufferin County. (See attached map)

With best wishes, I remain,

14. Mr. William Howard, Business Manager of Local 46, attempted to commence negotiations with companies who had been members of the Council of employers referred to in the collective agreement. This was in August of 1973. The Council replied that the request was inappropriate since

"to the best of our knowledge Local Union 46 does not hold bargaining rights". Subsequently, on or about November 9, 1973, Howard forwarded to the applicant and the other Council members a copy of St. Eloi's letter of October 22, 1973 together with a request to bargain. A reply was received from the Council which stated that in its opinion there had not been a proper assignment of bargaining rights to Local 46. The Association, in the meantime, proceeded to negotiate with Canadian Pneumatic Control Contractors Association which comprised companies in the former Association, exclusive of the applicant, and on or about January 9, 1974 signed a collective agreement with them.

15. In the opinion of the Board, the question as to where the bargaining rights lie is a fundamental element of the situation under review. The resolution of this question with respect to bargaining rights is crucial to the interests of all parties in this matter.

16. It is certainly quite clear from the evidence of St. Eloi, coupled with the contents of his letter of October 22, 1973, that the Association had relinquished its bargaining rights to Local 46 with respect to the area described in the letter and has attempted to transfer its jurisdiction and bargaining rights to that local. The latter has accepted the purported transfer of jurisdiction and bargaining rights and has attempted to exercise them with respect to the applicant in the designated area. Counsel for the respondents argued that the situation is accordingly one that falls within the provisions of section 54 of The Labour Relations Act.

17. Sections 54(1) and (3) of the Act provide as follows:

54.-(1) Where a trade union claims that by reason of a merger or amalgamation or a transfer of jurisdiction it is the successor of a trade union that at the time of the merger, amalgamation or transfer of jurisdiction was the bargaining agent of a unit of employees of an employer and any question arises in respect of its rights to act as the successor, the Board, in any proceeding before it or on the application of any person or trade union concerned, may declare that the successor has or has not, as the case may be, acquired the rights, privileges and duties under this Act of its predecessor, or the Board may dismiss the application.

(3) Where the Board makes an affirmative declaration under subsection 1, the successor shall for the purposes of this Act be conclusively presumed to have acquired the rights, privileges and duties of its predecessor, whether under a collective agreement or otherwise, and the employer, the successor and the employees concerned shall recognize such status in all respects.

18. In dealing with this submission, it would appear, provided that all union constitutional requirements had been met and Local 46 having established its status as a trade union, that it would be open to Local 46 to apply for a declaration of successor rights under section 54 of the Act or for certification.

19. Following the signing of the collective agreement of January 9, 1974, a meeting of members of Local 46 was held in Toronto. The meeting took place on Wednesday, January 30, at which time the agreement was explained to the membership. Questions were asked by employees with respect to the position of the applicant and the employees were told that the officers of Local 46 considered the applicant to be a non-union contractor. At the same meeting, all members of Local 46 who were employees of the applicant were directed to report to the union hall on Monday, February 4. It was given in evidence that the purpose of the meeting was to obtain names of employees of the applicant so that an application for certification might be made.

20. On the morning of February 4, 1974, the applicant's employees met at the union hall. They were addressed by Philip Taylor, who is a superintendent of the applicant and who is also a member of Local 46. He stated to the Board that he was a sort of line of communication between the applicant and the union and that he attended the meeting to communicate to the employees management's views on the matter. After the meeting, Taylor reported to the applicant that matters had reached a stalemate. His discussion with the employees had centered around the question as to whether there was a collective agreement in effect or not. The company, he said, felt there was an agreement; the union was of the opinion that there was no agreement. Taylor did not go to work after he had made his report because, he told the Board, there were no employees to supervise.

21. The evidence is that all of the employee respondents attended the meeting in the union hall on the morning of Monday, February 4 and that although they were scheduled to go to work, none of them reported for work that day. None of the named respondent employees had reported for work up to the time of the hearing of this matter by the Board although scheduled to work.

22. It was the contention of the respondents that they had not gone on strike against the applicant but had resigned because the applicant was a non-union employer. The evidence is that if a collective agreement were to be signed between Local 46 and the applicant the employees would return to work. It is plain from the evidence that the respondent employees who attended the meeting reached a common decision that they would cease to work for the applicant unless and until an agreement was reached. This action on the part of the respondents falls within the definition of a strike as set out in section 1(1)(m) above.

23. The Board is aware that there has been some confusion on the

part of employees with respect to the existence of the collective agreement and with respect to the essential question as to who retains bargaining rights as between the Association and Local 46 and that this may have contributed to the action taken by the respondents. It is obvious, however, that the dispute will more readily reach a solution with a return to work followed by a proper determination of the question with respect to the bargaining rights.

24. The Board, having in mind the fact that a declaration is informative and not directed towards individuals, declares that the cessation of work by the respondents commencing on February 4, 1974 and continuing from day to day thereafter until February 12, 1974 is a strike contrary to the provisions of section 63(2) of The Labour Relations Act.

5105-73-R: Amalgamated Transit Union, Division 107 (Applicant) v. THE CORPORATION OF THE CITY OF MISSISSAUGA, TRANSIT DIVISION (Respondent).

BEFORE: D.H. Kates, Vice-Chairman, and Board Members O. Hodges and F. W. Murray.

APPEARANCES AT THE HEARING: L. C. Arnold and H. Austin for the applicant; G. G. Smith and S. A. Keith for the respondent.

DECISION OF THE BOARD: February 20, 1974.

1. The name "The Corporation of the Town of Mississauga - Transit Division" appearing in the style of cause of this application as the name of the respondent is amended to read: "The Corporation of the City of Mississauga, Transit Division".

2. This is an application for certification made under The Labour Relations Act.

3. The Board heard representations from counsel for the applicant with respect to the significance that should attach to a series of documents filed along with the applicant's application for certification. It seems that a duly executed memorandum of agreement dated November 20, 1973, was entered into between The Corporation of The Town of Mississauga and The Amalgamated Transit Union, Division 107, wherein the parties incorporated by reference the terms and conditions of what purports to be a collective agreement and addendum thereto between the applicant and the Mississauga Transit Division, Charterways Co. Limited. It appears to the Board that the parties to the document dated November 20, 1973 have entered into a voluntary recognition agreement as contemplated under S5(3) of The Act and the Board so finds.

4. It also appears that by operation of The Regional Municipality of Peel Act S.O. 1973 c. 60 S2(1)(a) on January 1, 1974, The Corporation of

the Town of Port Credit and The Corporation of the Town of Streetsville are amalgamated as a city municipality bearing the name of The Corporation of The City of Mississauga and those portions of The Town of Mississauga and The Town of Oakville as described in that enactment are annexed to such city.

5. The Board in the exercise of its plenary powers under The Labour Relations Act determined that the instant application be more appropriately treated as an application under S55 of the Act.

6. The Board finds that the Legislative enactment as cited in paragraph 4 herein constitutes an amalgamation, union or otherwise joining together of two or more municipalities or all or parts thereof within the meaning of S55(11) of the Act.

7. The Board, upon the representation of the parties that all employees described in the collective agreement cited in paragraph 3 herein were given notice of the instant proceedings and that there are no other persons who would have an interest in these proceedings, declares that the applicant is the bargaining agent for all employees of the respondent corporation in the bargaining unit described in the collective agreement adverted to. [see; S55(6)] .

8. The Board notes that although there is a statutory "deemed" intermingling provision pursuant to S55(11) of the Act, since there was no "actual" intermingling of employees formerly employed by the predecessor corporations, the Board does not consider it appropriate in the instant case to hold a representation vote under S55(8).

9. Since the effect of a declaration under S55(10) has the same effect as the issuance of a certificate pursuant to an application for certification in that a trade union is entitled to give notice with a view to making a collective agreement as it would under S13, this Board is of the opinion that the proceedings with respect to the applicant's application for certification be terminated.

5178-73-U: The Wood, Wire & Metal Lathers' International Union, Local 562 (Applicant) v. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 18 AND JACK TARBUTT (Respondents).

BEFORE: R. A. Furness, Vice-Chairman, and Board Members H. J. F. Ade and E. Boyer.

APPEARANCES AT THE HEARING: A. M. Minsky and H. K. Weller for the applicant; no one appeared for the respondents.

DECISION OF THE BOARD: February 21, 1974.

1. The applicant has applied to the Board for relief under section 123 of The Labour Relations Act. The application was filed on Monday, February 11, 1974.
2. At the commencement of the hearing, counsel for the applicant informed the Board that the United Brotherhood of Carpenters and Joiners of America, Local 18 (hereinafter referred to as "Local 18") through its counsel had agreed to send a telegram to the Board which would contain certain undertakings satisfactory to the applicant and request that this application be adjourned sine die.
3. The Board did not receive such a telegram. The Registrar telephoned the office of counsel for Local 18 and the office of Local 18 concerning the expected telegram. In both instances there was a denial of the knowledge of the existence of such a telegram.
4. In pursuing the matters referred to in paragraphs two and three herein, the Board delayed the commencement of the hearing from 9.30 a.m. to 10.35 a.m.
5. The applicant called as witnesses Elmo Colussi, the president of Opec Acoustics & Drywall Ltd. (hereinafter referred to as "Opec"); Antonio (Tony) D'Alimonte, the general foreman of Opec; and Donald Burns, a superintendent of Pigott Structures Co. Ltd. (hereinafter referred to as "Pigott").
6. Mr. Colussi gave evidence that Opec's business is dealing with metal studs, drywall and acoustical tile and that Opec has a collective agreement with the applicant which was in effect at the times material to this application and which by its terms expires on April 30, 1974. He informed the Board that work performed by Opec is covered by this collective agreement. Mr. Colussi testified that on February 4, 1974, Opec commenced work on the Thrifty's Just Pants Store (hereinafter referred to as the "Store") in the Greater Hamilton Shopping Centre (hereinafter referred to as the "Centre") and performed work covered by the collective agreement. Opec performed the work at the Store in the Centre under a contract with Rudy Honickman Interior Designs. The witness gave evidence that the Centre is owned by the Fairview Corporation Limited (hereinafter referred to as "Fairview") and that Pigott is the general contractor engaged in closing an open mall and in building extensions thereto at the Centre.
7. Mr. Colussi testified that Opec started work at the Store on Monday, February 4, 1974, with four employees who are members of the applicant and that Tony D'Alimonte was the general foreman. On February 4, 1974, between 1.00 p.m. and 2.00 p.m., Mr. D'Alimonte telephoned Mr. Colussi and informed him that he had had trouble with the carpenters. Mr. Colussi was informed that the business agent of the carpenters had approached Mr. D'Alimonte and told him that the work being done by the four employees of Opec did not belong to them and that if the four employees stayed there, the carpenters at the Centre would walk-off the job.

8. At this point, Mr. Colussi telephoned the applicant and told them what had happened and asked them to send an agent down to see what was wrong. On Tuesday, February 5, 1974, the witness received a telephone call from Mark Dyason, the tenant co-ordinator of the Centre for Fairview, who asked the witness if Opec would leave the job so that the carpenters would not walk-off the job. Mr. Dyason stated that he had nothing against the witness, Opec's employees or the applicant, but that if Opec stayed on the job with its men, the carpenters would walk-off the job. Mr. Colussi informed Mr. Dyason that Opec's men were capable of doing the job as well as anybody else and Mr. Dyason concluded by asking the witness to see what he could do so that the carpenters would not walk-off the job. Mr. Colussi again telephoned the applicant and was told that Opec had the right to work at the Store.

9. The witness informed the Board that on Wednesday, February 6, 1974, he received another telephone call from Mr. D'Alimonte and was informed that the carpenters had walked-off the job and that someone from the Centre had asked Opec's employees to leave the premises so as not to have any problems. Whereupon, Mr. Colussi told Mr. D'Alimonte to stay there because Opec's employees were not doing anything wrong. At this point, Pigott cut off the power to the Store and Mr. D'Alimonte was forced to purchase an extension plug in order to utilize another source of power.

10. Mr. Colussi gave evidence that when Opec's employees returned to the Store on the morning of Thursday, February 7, 1974, they found that Opec's material had been removed from the Store and placed in an adjacent store and fenced around with a snow fence. The Store had been completely boarded up and Opec's men were unable to work there on either Thursday, February 7 or Friday, February 8, 1974. The witness testified that Opec has about three days more work to perform at the Store.

11. Mr. D'Alimonte gave evidence that Opec's employees started work at the Store on February 4, 1974, and were engaged in the installation of acoustical suspended ceilings and layout work for metal partitions. On that day, he was approached by Jack Tarbutt, the business agent of Local 18, and was told that Opec's employees could not do the work unless they belonged to the Carpenters' Union. On February 5, 1974, the witness was approached by Mr. Donald Burns and was informed that Opec's employees could not work at the Store. The witness testified that on February 5, 1974, he called the tenant of the Store, a Mr. Lurman, and told him what was going on. Mr. Lurman informed the witness that Opec's employees could work there because he had paid his month's rent on the Store.

12. Opec's employees started work on February 6, 1974, but had problems getting power into the Store. Mr. D'Alimonte informed the Board that the carpenters at the Centre ceased working during the morning of February 6 and stood around until about 1.00 p.m. The witness gave evidence that on February 6, 1974, Mr. Burns came to the Store and told Opec's employees to leave the Store and announced he was going to board up the Store. He

did not give any reasons for his proposed action. On February 7, 1974, Opec's employees reported for work at the Store and were unable to enter because it was boarded up. The witness informed the Board that Opec's materials had been removed from the Store without his permission and had been placed in an adjacent store and surrounded by a snow fence. Opec's men waited until midday to see if they would be permitted to enter the Store and continue their work. When this proved impossible, they left the Centre.

13. Mr. Burns informed the Board that Pigott, in its capacity as general contractor, was engaged in renovating the Centre for the owner, Fairview Corporation Limited, and that he is at the Centre on a day to day basis. He agreed that Pigott has a collective agreement with Local 18 effective from May 1, 1973 until April 30, 1976, covering carpenters and carpenters' apprentices in, inter alia, the City of Hamilton. The witness gave evidence that Pigott had, at the material times, four carpenters and one apprentice working at the Centre. He testified that he spoke to Jack Tarbutt on February 6, 1974, at the Centre. The witness was evasive on the subject of his conversation with Mr. Tarbutt. However, he did state that one of Pigott's carpenters told him that the shop steward had phoned to have Mr. Tarbutt and Charles Gugliano, a business agent for Local 18, come to the Centre. The witness further stated that Mr. Tarbutt spoke to the shop steward and the carpenters resumed work after the cessation of work for two hours.

14. The witness stated that about twelve carpenters of John E. Smith and Begg & Daigle also joined Pigott's carpenters in the cessation of work. Mr. Burns gave evidence that on February 6 he had asked Opec's employees to leave the Store because it had not been turned over to the new tenant and Pigott had not finished its work on the Store. He agreed he had been to the Store prior to the cessation of work by the carpenters on February 6 and had said nothing to Opec's employees. He further agreed that he did not know if the tenant of the Store had signed a lease. The witness draw a distinction between a lease and turning over the Store and stated that he was acting on the advice of his superior, Mr. Garvey and the architect. He acknowledged that the cessation of work by the carpenters was because of their dispute with the applicant and Opec's employees over the right to do the work in the Store. The witness also agreed that although he had been instructed on January 30, 1974 that the Stores were Pigott's responsibility until turned over to the owner, he waited until February 6, 1974 to enforce this responsibility. At length, Mr. Burns agreed that the Store would not have been boarded up and the materials would not have been removed if the dispute between the applicant and Local 18 had not occurred.

15. The witness, Donald Burns, gave his evidence in a vague and equivocal manner and was seldom truly responsive to the questions addressed to him. In his testimony, he was, in our opinion, less than candid and forthright with the Board.

16. Having regard to the evidence and representations before it, the Board notes that Mr. Burns made no mention of Pigott's concern about its "property rights" at the time he ordered Opec's employees from the Store and boarded it up and that on February 4 and 5, 1974, he made no attempt to protect this "property right". Indeed, he conceded that he would not have boarded up the Store in the absence of a dispute between the applicant and Local 18. In addition, Pigott made an earlier attempt to force the employees of Opec off the job by cutting off the power in the Store. This followed upon the visit by Jack Tarbutt to the Store and to Mr. Burns and in conjunction with the cessation of work by the carpenters.

17. In all the circumstances, the Board finds that on February 6, 1974, Jack Tarbutt an officer, official or agent of Local 18 counselled or procured or supported or encouraged an unlawful strike of persons employed by Pigott as carpenters for the purpose of compelling Opec to cease to employ members of the applicant in the Store. Having regard to the fact that Jack Tarbutt is an officer, official or agent of Local 18 and to the provisions of section 88(2) of The Labour Relations Act, Local 18 is also deemed to be responsible on February 6, 1974, for the counselling or procuring or supporting or encouraging of the unlawful strike referred to in this paragraph.

18. The Board finds that the prerequisite conditions to its exercising its authority under section 123 of The Labour Relations Act have been satisfied.

19. Having regard to all the circumstances of this application, the Board deems it advisable and hereby makes the following direction:

That the respondents, their respective agents, officers, officials, servants, employees, representatives, substitutes and all other persons acting for and on their behalf refrain from:

- (i) threatening Pigott Structures Co. Ltd., Fairview Corporation Limited, Opec Acoustics & Drywall Ltd., or any of their respective officers, officials, agents, representatives or employees or any other person, firm or corporation, with an unlawful strike of members of the respondent Local 18 employed by Pigott Structures Co. Ltd., John E. Smith, Begg & Daigle and/or other contractors engaged at the Greater Hamilton Shopping Centre, Hamilton, with the view, purpose, motive or intention of preventing members of the applicant employed by Opec Acoustics & Drywall Ltd. at the Greater Hamilton Shopping Centre, Hamilton, from performing

the work in dispute which has been assigned to them.

- (ii) authorizing, counselling, procuring, supporting or encouraging an unlawful strike of members of the respondent Local 18 employed by Pigott Structures Co. Ltd., John E. Smith, Begg & Daigle and/or other contractors engaged at the Greater Hamilton Shopping Centre, Hamilton, with the view, purpose, motive or intention of preventing members of the applicant employed by Opec Acoustics & Drywall Ltd. at the Greater Hamilton Shopping Centre, Hamilton, from performing the work in dispute which has been assigned to them.
- (iii) interfering with the members of the applicant employed by Opec Acoustics & Drywall Ltd. at the Greater Hamilton Shopping Centre, Hamilton.
- (iv) preventing members of the applicant employed by Opec Acoustics & Drywall Ltd. at the Greater Hamilton Shopping Centre, Hamilton, from performing the work in dispute which has been assigned to them.

4941-73-R: United Brotherhood of Carpenters and Joiners of America, Local Union 1669 (Applicant) v. ANDEN VINYL PRODUCTS LTD. (Respondent).

BEFORE: R. A. Furness, Vice-Chairman, and Board Members H. J. F. Ade and E. Boyer.

DECISION OF THE BOARD: February 25, 1974.

1. The Board finds that the applicant is a trade union within the meaning of section 1(1)(n) of The Labour Relations Act.
2. In a letter dated February 20, 1974, the applicant has advised the Board that:

"We state the following:

The Union does not accept the report of the Examiner, Mr. N. J. Harper dated February 13th, 1974 for the following reasons:

1. Application for Certification had been made by applicant Union in the District of Kenora

2. The Company found it most convenient to do business within the District of Kenora and most specifically in the Red Lake - Sioux Lookout areas which are most considerable long distances apart from their main company offices in London, Ontario

Therefore in our opinion and based on the foregoing, no examination should have been held outside of the District of Kenora, hence the refusal in part of applicant to appear at the scheduled place of examination.

Yours truly,
Signed: Wm. Sherman,
Vice-President and
Business Representative"

3. At the beginning of his Report, the Examiner stated in paragraphs 1, 2, 3 and 4 thereon:

"1.

I convened a meeting of the representatives of the parties on the respondent's premises, 229 Adelaide Street, London, Ontario, on Friday, February 1st, 1974, at 10.30 A.M.

2. Before convening the above meeting, I realized:

- (a) the respondent claimed he was not the employer of the persons, and
- (b) the persons at the time of application were allegedly working in Sioux Lookout, Red Lake and Dryden, Ontario, and
- (c) the alleged employees lived either in Sudbury or Val Caron, Ontario, and
- (d) the respondent has offices in London, Sudbury and Val Caron, Ontario, and
- (e) any communication with the Board from the respondent had been received from the London Offices.

3. Because of these complications, I made a reasonable endeavour to make arrangements to hold my first meeting

in a place accessible to the persons alleged to be employees of the respondent.

4. Telephoned Mr. W. Sherman, applicant's representative, at his Kenora office, at 11.40 A.M., on the 15th of January - no one answered the call. At 12.50 P.M. called again and contacted Mr. W. Sherman and asked him to let me know where the best location for my meeting would be. He replied he would call back and let me know later that afternoon. On not receiving his call, I called again on the 16th of January, at 1.37 P.M. and left a message for him to call me immediately because the announcement on his tape recorder stated he was only away momentarily. Having still not returned my call by the 18th of January, I called and left a message again at 2.36 P.M., the tape recorder again saying he was only away momentarily. To date, the 13th of February, 1974, I have still not had any response to my phone messages."

4. The Examiner convened his meeting in London because of the failure of the applicant to advise him of the best location for the meeting.

5. The Board has considered the Report of the Examiner dated February 13, 1974. The Board notes that, although duly notified of the meeting convened by the Examiner, the applicant did not attend this meeting.

6. Having regard to the evidence before it, the Board finds that the persons alleged by the applicant to be employees of the respondent are, in fact, independent contractors and not employees of the respondent.

7. The Board further finds that there were no employees of the respondent in the bargaining unit for which the applicant is seeking certification. Having regard to the provisions of section 6(1) of The Labour Relations Act, it follows that there is not a unit of employees of the respondent appropriate for collective bargaining.

8. Accordingly, this application is dismissed.

5063-73-U: The Ottawa Board of Education Employees' Association (Applicant) v. THE OTTAWA BOARD OF EDUCATION (Respondent).

BEFORE: D. H. Kates, Vice-Chairman, and Board Members F. W. Murray and P. J. O'Keefe.

APPEARANCES AT THE HEARING: Peter Rock for the applicant; no one appearing for the respondent.

DECISION OF VICE-CHAIRMAN D. H. KATES, AND BOARD MEMBER P. J. O'KEEFFE:
February 26, 1974.

1. This is an application under section 90 of The Labour Relations Act for leave of the Board to prosecute the respondent for failing to bargain in good faith and make every reasonable effort to make a collective agreement within the meaning of section 14 of the Act,
2. The respondent raised in its reply filed in response to the instant application a matter relating to the deficiencies of particulars with respect to the allegations made by the applicant.
3. The Board's Rules of Practice and Procedure (section 47) require sufficient particulars be filed in support of allegations made pursuant to proceedings before this Board. Upon a request being made for particulars, the Board will direct, should the circumstances require, that the party comply with the requirements of the Board's procedures. Should a party fail to satisfy the Board of these requirements, the application may very well be dismissed. And, if in satisfying the Board a party finds itself unable to proceed for being caught by surprise, the Board will be disposed to entertain an adjournment to permit proper preparation of the case to be met.
4. Here, the respondent raised a matter with respect to the adequacy of particulars but failed to file an appearance at the hearing set by the Registrar in connection with the application. Furthermore, the Board notes that sufficient notice of the date of the hearing was conferred upon all interested parties to the proceedings and no request for an adjournment was made by any party with respect to the hearing.
5. The Board having regard to the aforementioned decided at the hearing to proceed with the application.
6. Having regard to the evidence and the representations made by counsel for the applicant the Board finds an arguable question of fact and law has been raised as to whether on or about January 10, 1974, the respondent failed to bargain in good faith and make every reasonable effort to make a collective agreement.
7. The appropriate documents will issue.

DECISION OF BOARD MEMBER F. W. MURRAY: February 26, 1974.

Having regard to the evidence and representation of counsel for the applicant, I would not have granted the applicant leave to prosecute.

4828-73-R: Canadian Union of Public Employees (Applicant) v. NORTH YORK GENERAL HOSPITAL (Respondent) v. Canadian Union of General Employees (Intervener).

BEFORE: Frank V. Boscariol, Vice-Chairman, and Board Members O. Hodges and J. D. Bell.

APPEARANCES AT THE HEARING: M. Hikl and R. Chisholm for the applicant; T. W. Sargeant and J. R. Stewart for the respondent; G. Miller and R. Anderson for the intervener.

DECISION OF THE BOARD:

February 26, 1974.

1. Pursuant to the decision of the Board dated December 11, 1973, the Board directed the taking of a pre-hearing representation vote in this matter. The report in this regard discloses that the vote was conducted on December 18 and 20, 1973, wherein 204 ballots were marked in favour of the applicant and 68 ballots were marked in favour of the intervener.
2. However, as a result of certain charges filed by the intervener in its letter dated December 28, 1973, and following the Board's preliminary investigation concerning the allegations that Mrs. Angela Hilton did not pay the required dollar on her behalf nor did she sign the membership card that was filed in support of the applicant, the Registrar set this matter down for hearing on February 6, 1974.
3. Accordingly, at the commencement of this hearing, the parties were advised that the Board would proceed to conduct its usual inquiry into the non-pay and non-sign allegations. In this regard, evidence was adduced from Mrs. Angela Hilton and Mrs. Susan Shorope, who along with Mrs. Ruby Chisholm, the person who had signed the Form 8 document filed on behalf of the applicant, were subpoenaed by the Board. All parties to these proceedings were accorded full rights of cross-examination in relation to Mrs. Hilton and Mrs. Shorope, who were called upon by the Board to testify.
4. The evidence as adduced through Mrs. Hilton and Mrs. Shorope is as follows: On the evening of September 10, 1973, Mrs. Shorope, a housekeeper in the employ of the respondent, phoned her fellow employee Mrs. Hilton who was on vacation at the time, with a view to soliciting her membership in the applicant. Mrs. Hilton then instructed Mrs. Shorope to leave a membership card with her daughter who was a patient at the time in the respondent hospital. Mrs. Hilton's evidence is that she had general difficulty in writing and that accordingly she had, in effect, given her daughter a general power of attorney concerning any of her personal documents. By the time Mrs. Hilton attended at her daughter's room the next day, the relevant blank portions of the membership card which included the signature portion, had already been filled in by the daughter on Mrs. Hilton's behalf. Having carefully

reviewed the totality of the evidence as adduced in this regard, we are satisfied that in these circumstances, Mrs. Hilton has effectively adopted the said signature as her own.

5. It should be noted at this point that Mrs. Hilton's membership card "proper" as initially filed with the Board in support of this application, takes the form of a "combination" application for membership and receipt. However, at the time of execution, the card also contained a perforated attachment entitled "Receipt for Initiation Fee" which was subsequently filed in these proceedings as Exhibit #1. Mrs. Hilton's testimony is that she received the card from her daughter and upon leaving her hospital room she coincidentally encountered Mrs. Shorope in the hallway, where after a brief discussion they proceeded to a utility room. Mrs. Hilton at this time separated Exhibit #1 from the membership card and both persons then proceeded to sign Exhibit #1 which acknowledges the payment of one dollar by Mrs. Hilton to Mrs. Shorope. It was during the course of this transaction that Mrs. Hilton informed Mrs. Shorope that she did not have the necessary change. She then instructed Mrs. Shorope to collect the dollar from Mrs. Margaret Mitchell, a co-worker to whom Mrs. Hilton had previously made a loan. Mrs. Shorope thereupon took Mrs. Hilton's card and proceeded to the cafeteria where she met Mrs. Mitchell, who acknowledged the existence of the loan. Mrs. Mitchell then gave Mrs. Shorope the dollar in support of Mrs. Hilton's card.

6. During the course of her testimony, Mrs. Shorope who holds no official position with the applicant, testified that she had received personal instructions from Mrs. Chisholm concerning her duties as collector which were to the effect that "I must be given one dollar with every card." She felt that she had complied with these instructions. She also indicated that she had no further conversations with Mrs. Chisholm at the time she had turned over the cards and the proceeds to a fellow employee.

7. Nevertheless, Mrs. Shorope did identify a two page document dated October 30, 1973, containing a list of names of thirty-three employees. Opposite each name appears information relating to address, phone number and occupation together with the amount of fee paid and the date that the membership card for each of these persons was signed. Mr. Hilton's name appears on this list. Mrs. Shorope further identified her signature appearing at the bottom of each page of this document. The statement immediately preceding her signature is as follows: "I hereby certify that persons named above have personally paid the amount indicated on the Application for Membership Card on account of Union dues or Initiation Fees to me as the Collector."

8. The Board recessed at the conclusion of the evidence as adduced through Mrs. Hilton and Mrs. Shorope. Upon re-convening proceedings, the Board advised the parties that it had concluded its inquiry and that it would therefore not be calling Mrs. Chisholm as its own witness. Although given the opportunity to do so, none of the parties chose to tender any further evidence before us.

9. Having carefully reviewed the totality of the evidence as adduced and the representations of the parties thereto, we are satisfied that Mrs. Hilton did, in the particular circumstances of this case, make the necessary financial sacrifice towards membership in the applicant and that Mrs. Shorope did in fact collect the dollar on her behalf. Accordingly, in these circumstances and taking into account our conclusion as reached in paragraph #4 herein, we are not prepared to discount Mrs. Hilton's card.

10. Counsel for the intervener strongly submitted that it was incumbent upon the Board in these circumstances to satisfy itself that the requirements of the Form 8 declaration filed in support of this application have been complied with and that accordingly the Board itself should have adduced evidence from Mrs. Chisholm in this regard. As precedent for this proposition, he cites the recent decision of the Board in The Stanley Steel Company Limited Case (1972) OLRB M.R. 181.

11. In the aforementioned case, the Board was faced with the situation where at least three cards were in fact found to be deficient on the basis that the person shown as collector was not the de facto collector. This is not the situation confronting this Board as we are satisfied with the propriety of the membership cards as filed. As was indicated to counsel for the intervener, it was open to him to call Mrs. Chisholm who was available to give evidence in the event that he should see fit to challenge her Form 8 document. It has been the recent practice of this Board to subpoena the signer of the Form 8 document in "non-pay" or "non-sign" situations generally with the view to clarifying any possible discrepancies in the evidence which may cast doubt upon the veracity of the statements contained in the said Form 8 document. In the instant case, as distinguished from the situation as depicted in The Stanley Steel Company Limited Case (supra), we find that the evidence as adduced does not call into question the propriety of the statements contained in the Form 8 document and it was on this basis that for the purposes of the Board's inquiry, we did not consider it necessary to call upon Mrs. Chisholm in this respect. Having regard therefore to all of the circumstances of this case and taking into account the effect of Mrs. Shorope's "certificate" as described in Paragraph #7 herein, we are not prepared to now extend our inquiry into circumstances surrounding the taking of the Form 8 declaration. This document therefore remains unchallenged and must be taken on its face, and we are therefore, for the purposes of these proceedings, prepared to rely upon Mrs. Chisholm's representations as contained therein.

12. Counsel for the intervener, has also indicated that the intervener would not be proceeding with the remainder of its allegation as set out in its letter to the Board dated December 28, 1973. Having regard to all of the circumstances of this case, all charges as filed by the Intervener during the course of these proceedings are accordingly dismissed.

13. On the taking of the pre-hearing representation vote directed by

the Board more than fifty per cent of the ballots cast were cast in favour of the applicant.

14. A certificate will issue to the applicant.

. . .

5148-73-R: CUA Employees' Association (Applicant) v. CANADIAN UNDER-WRITERS' ASSOCIATION (Respondent).

BEFORE: R. A. Furness, Vice-Chairman, and Board Members H. J. F. Ade and E. Boyer.

APPEARANCES AT THE HEARING: Norman Sherman for the applicant; B. W. Binning and W. Seaton for the respondent.

DECISION OF THE BOARD: February 27, 1974.

1. Having regard to the evidence adduced at the hearing and to the representations of the parties, the Board finds that the applicant is a trade union within the meaning of section 1(1)(n) of The Labour Relations Act.

2. The evidence respecting membership filed by the applicant consisted of signed receipts for the sum of one dollar on account of membership fees. These receipts were not accompanied by applications for membership and there was no evidence before the Board that the persons on whose behalf the receipts were submitted had applied to join the applicant. The Board finds that the evidence respecting membership filed by the applicant is not evidence of membership as contemplated by section 1(1)(j) of the Act.

3. At the hearing, the applicant requested leave to file certain membership lists with the Board. This request was rejected Rules of Procedure, evidence of membership is required to be filed with the Board not later than the terminal date for the application. The hearing was conducted on February 27, 1974 and the terminal date for the application was February 14, 1974. It was also argued by the respondent that such evidence ought to be received by the Board under the provisions of section 48(2) of the Board's Rules of Procedure. Section 48(2) refers, of course, to oral evidence of membership, and, even, if the evidence of membership which the applicant desired to file with the Board were oral evidence, it would not merely identify and substantiate the written evidence respecting membership referred to in paragraph two herein, but would rather supplement the evidence respecting membership previously filed by the applicant.

. . .

5. In the result, this application is dismissed.

5124-73-R: Christian Labour Association of Canada (Applicant) v. BESTVIEW HOLDINGS LIMITED, CARRYING ON BUSINESS AS BESTVIEW NURSING HOME, ORILLIA (Respondent) v. Service Employees Union, Local 204, affiliated with the S.E.I.U., AF of L, C.I.O., C.L.C. (Intervener) v. Group of Employees (Objectors).

BEFORE: D. H. Kates, Vice-Chairman, and Board Members A. Main and F. W. Murray.

APPEARANCES AT THE HEARING: T. J. Dunne, M. Smith and E. Vanderkloet for the applicant; G. Longo; P. Cavalluzzo and R. Nannini for the intervener; A. Bryson and A. Engeland, for the objectors.

DECISION OF THE BOARD: February 28, 1974.

4. Having regard to the agreement of the parties, the Board finds that all employees of the respondent in the City of Orillia, save and except supervisors, persons above the rank of supervisor, graduate and registered nurses, technical employees, office staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period, constitute a unit of employees of the respondent appropriate for collective bargaining.

5. The Board is satisfied on the basis of all the evidence before it that not less than thirty-five per cent of the employees of the respondent in the bargaining unit, at the time the application was made, were members of the applicant on February 11, 1974, the terminal date fixed for this application and the date which the Board determines, under section 92(2)(j) of The Labour Relations Act, to be the time for the purpose of ascertaining membership under section 7(1) of the said Act.

6. The Board is satisfied on the basis of all the evidence before it that more than sixty-five per cent of the employees of the respondent in the bargaining unit, at the time the application was made, were members of the intervener on February 11, 1974, the terminal date fixed for this application and the date which the Board determines, under section 92(2)(j) of The Labour Relations Act, to be the time for the purpose of ascertaining membership under section 7(1) of the said Act.

7. The Board having regard to the representations made by the parties and to its discretion under section 7(2) of the Act directs that a representation vote is the most satisfactory way of determining the appropriate bargaining agent for purposes of the instant application.

8. A representation vote will be taken of the employees of the respondent in the bargaining unit. All employees of the respondent in the bargaining unit on the date hereof who do not voluntarily terminate their employment or who are not discharged for cause between the date hereof and the date the vote is taken will be eligible to vote.

9. Voters will be given a choice between the applicant and the intervener.
10. The matter is referred to the Registrar.

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4586-73-R: SOLA BASIC LIMITED (APPLICANT) V. INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AND THE INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (RESPONDENTS). (GRANTED).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE APPLICANT AT CHINGUACOUSY TOWNSHIP, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF."

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	27
NUMBER OF PERSONS WHO CAST BALLOTS	27
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS	4
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JURISDICTIONAL DISPUTE

4982-73-JD: ADMIRAL ENGINEERING & CONSTRUCTION LTD. (COMPLAINANT) V. LOCAL 47 - SHEET METAL WORKERS INT. UNION (RESPONDENT). (WITHDRAWN).

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4457-73-M: CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL #1586 (APPLICANT) V. MEDEX NURSING CENTRE-OSHAWA (RESPONDENT). (AFFIRMATIVE).

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4671-73-M: KANNARSH HOLDINGS LIMITED, CARRYING ON THE BUSINESS OF THE MONTEBELLO INN (EMPLOYER) V. LOCAL 756 OF THE HOTEL AND RESTAURANT EMPLOYEES' UNION (TRADE UNION). (AFFIRMATIVE).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

4554-73-R: The United Brotherhood of Carpenters and Joiners of America Local Union 1669 (Applicant) v. Roy Construction (North Bay) Limited (Respondent) v. Group of Employees (Objectors). (REQUEST DENIED).

4821-73-R: Labourers' International Union of North America Local Union No. 497 (Applicant) v. Kilmer Van Nostrand Co. Limited (Respondent). (REQUEST DENIED).

4901-73-R: International Union of Operating Engineers, Local 793 (Applicant) v. Westbury Developments (Respondent). (REQUEST DENIED).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - TERMINATION

4697-73-R: Mr. D. Aubert (Applicant) v. Local 197 of the Hotel and Restaurant Employees and Bartenders International Union - A.F.L., C.I.O., C.L.C. (Respondent). (REQUEST DENIED).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 10

4811-73-M: United Steelworkers of America, Local 958 (Applicant) v. Consolidated Canadian Faraday Limited and Dumbarton Mines Ltd. (Respondents). (REQUEST DENIED).

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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARDDURING FEBRUARY 1974BARGAINING AGENTS CERTIFIED DURING FEBRUARYNo Vote Conducted

3192-72-R: The Boilermaker Contractors' Association of Ontario (Applicant) v. International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers (Respondent).

Unit: "all employers of employees for whom the respondent has bargaining rights in the Province of Ontario in the industrial, commercial and institutional, residential, sewers, tunnels and watermains and heavy engineering sectors of the construction industry." (no employees in the unit).

3704-73-R: Office & Professional Employees International Union (Applicant) v. Dodick & Brodski Legal Partnership (Respondent) v. Group of Employees (Objectors).

Unit: "all office and clerical employees of the respondent at Windsor, save and except supervisors, persons above the rank of supervisor and persons regularly employed for not more than 24 hours per week." (3 employees in the unit).

3709-73-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. Norm Ross Plastering Limited (Respondent) v. Local 97 of the Wood, Wire and Metal Lathers' International Union (Intervener).

Unit: "all employees of the respondent employed in the installation of interior walls and ceilings, including all drywall, acoustical, gypsum board and expanded metal applicators and their apprentices in Metropolitan Toronto, the Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

3710-73-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. Turner & Son Ltd. (Respondent) v. Local 97 of the Wood, Wire and Metal Lathers' International Union (Intervener #1) v. Labourers' International Union of North America, Local 506 (Intervener #2).

Unit: "all employees of the respondent employed in the installations of interior walls and ceilings, including all drywall, acoustical, gypsum board and expanded metal applicators and their apprentices in Metropolitan Toronto, the Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen, persons above the rank of non-working foreman and construction labourers covered by a collective agreement between Labourers' International Union of North America, Local 506 and the respondent, effective May 1, 1971." (8 employees in the unit).

3711-73-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. Nu-Dimension Drywall (Respondent) v. Local 97 of the Wood, Wire and Metal Lathers' International Union (Intervener).

Unit: "all employees of the respondent employed in the installation of interior walls and ceilings, including all drywall, acoustical, gypsum board and expanded metal applicators and their apprentices in Metropolitan Toronto, the Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

3712-73-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. Inservac Ltd. (Respondent) v. Labourers' International Union of North America, Local 506 (Intervener #1) v. Local 97 of the Wood, Wire and Metal Lathers' International Union (Intervener #2).

Unit: "all employees of the respondent employed in the installation of interior walls and ceilings, including all drywall, acoustical, gypsum board and expanded metal applicators and their apprentices in Metropolitan Toronto, the Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen, persons above the rank of non-working foreman and construction labourers covered by a collective agreement between Labourers' International Union of North America, Local 506 and the respondent dated July 6, 1971." (2 employees in the unit).

3713-73-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. Esson Plastering (Respondent) v. Labourers' International Union of North America, Local 506 (Intervener #1) v. Local 97 of the Wood, Wire and Metal Lathers' International Union (Intervener #2).

Unit: "all employees of the respondent employed in the installation of interior walls and ceilings, including all drywall, acoustical, gypsum board and expanded metal applicators and their apprentices in Metropolitan Toronto, the Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen, persons above the rank of non-working foreman and construction labourers covered by a collective agreement between Labourers' International Union of North America, Local 506 and the respondent, effective May 1, 1971." (14 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3714-73-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. Flatley and Kay Limited (Respondent) v. Labourers' International Union of North America, Local 506 (Intervener #1) v. Local 97 of the Wood, Wire and Metal Lathers' International Union (Intervener #2).

Unit: "all employees of the respondent employed in the installation of interior walls and ceilings, including all drywall, acoustical, gypsum board and expanded metal applicators and their apprentices in Metropolitan Toronto, the Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen, persons above the rank of non-working foreman and construction labourers covered by a collective agreement between Labourers' International Union, Local 506, and the respondent effective June 3, 1969." (10 employees in the unit).

3735-73-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. J. P. Gallagher Co. Ltd. (Respondent) v. Local 97 of the Wood, Wire and Metal Lathers' International Union (Intervener #1) v. Labourers' International Union of North America, Local 506 (Intervener #2).

Unit: "all employees of the respondent employed in the installation of interior walls and ceilings, including all drywall, acoustical, gypsum board and expanded metal applicators and their apprentices in Metropolitan Toronto, the Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen, persons above the rank of non-working foreman and construction labourers covered by a collective agreement between Labourers' International Union of North America, Local 506 and the respondent, effective May 1, 1971." (2 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3736-73-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. A. V. Hallam Ltd. (Respondent) v. Local 97 of the Wood, Wire and Metal Lathers' International Union (Intervener #1) v. International Brotherhood of Painters & Allied Trades, Local Union 1891 (Intervener #2) v. Labourers' International Union of North America, Local 506 (Intervener #3).

Unit: "all employees of the respondent employed in the installation of interior walls and ceilings, including all drywall, acoustical, gypsum board and expanded metal applicators and their apprentices in Metropolitan Toronto, the Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen, persons above the rank of non-working foreman, construction labourers covered by a collective agreement between Labourers' International Union of North America, Local 506 and The Contracting Plasterers' Association of Toronto, effective May 1, 1971, and employees covered by a collective agreement between the respondent and the International Brotherhood of Painters and Allied Trades, Local 1891, dated June 28, 1972." (25 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3737-73-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. Gallagher Bros. & Smith (Respondent) v. Labourers' International Union of North America, Local 506 (Intervener #1) v. Local 97 of the Wood, Wire and Metal Lathers' International Union (Intervener #2).

Unit: "all employees of the respondent employed in the installation of interior walls and ceilings, including all drywall, acoustical, gypsum board and expanded metal applicators and their apprentices in Metropolitan Toronto, the Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen, persons above the rank of non-working

foreman and construction labourers covered by a collective agreement between Labourers' International Union of North America, Local 506 and the respondent, effective May 1, 1971." (2 employees in the unit).

3775-73-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. Lath-Plast. Ltd. (Respondent) v. Local 97 of the Wood, Wire and Metal Lathers' International Union (Intervener #1) v. Labourers' International Union of North America, Local 506 (Intervener #2).

Unit: "all employees of the respondent employed in the installation of interior walls and ceilings, including all drywall, acoustical, gypsum board and expanded metal applicators and their apprentices in Metropolitan Toronto, the Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen, persons above the rank of non-working foreman and construction labourers covered by a collective agreement between Labourers' International Union of North America, Local 506 and The Contracting Plasterers' Association of Toronto, effective May 1, 1971." (2 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

3790-73-R: Office & Professional Employees International Union (Applicant) v. Weingarden & Hawrish (Respondent).

Unit: "all office and clerical employees of the respondent at Windsor, save and except supervisors, persons above the rank of supervisor and persons regularly employed for not more than twenty-four hours per week." (no employees in the unit).

4125-73-R: Oil, Chemical and Atomic Workers International Union (Applicant) v. C. H. Heist (Canada) Limited (Respondent).

Unit: "all employees of the respondent working in and out of the respondent's office at Sarnia, save and except foremen, persons above the rank of foreman, office and sales staff and employees covered by a subsisting collective agreement between the Labour Bureau Painting and Decorating Contractors of Ontario and The Ontario Council of the International Brotherhood of Painters and Allied Trades, to which the respondent is a signatory." (33 employees in the unit). (IN VIEW OF THE AGREEMENT OF THE PARTIES).

4251-73-R: Amalgamated Clothing Workers of America (Applicant) v. Rex-Nash Tailors Limited (Respondent) v. Group of Employees (Objectors).

- and -

4252-73-R: Amalgamated Clothing Workers of America (Applicant) v. J. E. Wiegand Company Limited (Respondent).

- and -

4253-73-R: Amalgamated Clothing Workers of America (Applicant) v. Saint Hill Levine Uniforms Canada Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondents in Metropolitan Toronto who are not presently covered by a subsisting collective agreement, save and except supervisors, persons above the rank of supervisor, office and sales staff, designers, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (16 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

4532-73-R: Labourers' International Union of North America, Local 837 (Applicant) v. Bono General Construction Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all construction labourers in the employ of the respondent in the County of Wentworth including part of Township of North Dumfries annexed from Beverly Township and the Township of Nassagaweya and the Town of Burlington in the County of Halton, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit).

4627-73-R: Canadian Food and Allied Workers Local Union 725, Chartered by The Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC (Applicant) v. Sayvette Limited (Respondent).

Unit: "all employees of the respondent at its retail stores at Ajax, save and except floor supervisors, persons above the rank of floor supervisor, personnel manager, head office payroll staff, security staff and management trainee." (123 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

4824-73-R: Labourers' International Union of North America, Local 527 (Applicant) v. McLaurin Construction Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent in the Regional Municipality of Ottawa - Carleton and the United Counties of Prescott and Russell, save and except non-working foremen and persons above the rank of non-working foreman." (23 employees in the unit).

4877-73-R: International Molders & Allied Workers Union (Applicant) v. Hobart Brothers of Canada Limited (Respondent) v. Employee (Objector).

Unit: "all employees of the respondent in Woodstock, save and except foremen, persons above the rank of foreman, office and sales staff, and students employed during the school vacation period." (23 employees in the unit).

4933-73-R: Canadian Food and Allied Workers Local Union 725, Chartered by The Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC (Applicant) v. Cardinal Distributors Limited (Respondent).

Unit: "all employees of the respondent at Oakville, save and except manager, and persons above the rank of manager." (8 employees in the unit).

4975-73-R: Hotel, Clubs, Restaurants, Taverns Employees Union, Local 261 (Applicant) v. Skyline Hotels Ltd. on behalf of its Skyline Hotel Ottawa (Respondent).

Unit: "all employees of the respondent engaged at its storeroom, save and except office staff, supervisors and persons above the rank of supervisor." (5 employees in the unit).

4986-73-R: The Canadian Union of Public Employees (Applicant) v. The Gananoque Waterworks Commission (Respondent).

- and -

4987-73-R: The Canadian Union of Public Employees (Applicant) v. The Gananoque Waterworks Commission (Respondent).

Unit: "all employees of the respondent in Gananoque save and except foremen and persons above the rank of foreman." (9 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5007-73-R: The Canadian Union of Public Employees (Applicant) v. The Corporation of the County of Peterborough (Respondent) v. Group of Employees (Objectors).

Unit: "all office, clerical and technical employees of the respondent in the County of Peterborough, save and except the clerk-treasurer, the deputy clerk-treasurer, the secretary to the clerk-treasurer and the secretary-treasurer, Peterborough County Land Division Committee." (10 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5011-73-R: The Carpenters' District Council of Toronto and vicinity, on behalf of Locals 27, 666, 681, 1133, 1963, 3227, 3233 of The United Brotherhood of Carpenters and Joiners of America (Applicant) v. Rodgers, Baum & Kenny Contracting & Interiors (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit).

5016-73-R: Rumpel Felt Employee's Association (Applicant) v. The Rumpel Felt Company Limited (Respondent).

Unit: "all employees of the respondent at Kitchener, save and except foremen, persons above the rank of foreman, office and sales staff, laboratory technicians and persons regularly employed for not more than twenty-four hours per week." (68 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5023-73-R: Ready-Mix, Building Supply, Hydro & Construction Drivers, Local 230 Affiliated with The International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Building Products of Canada Limited (Respondent).

Unit: "all employees of the respondent company in the Municipality of Metropolitan Toronto save and except foremen, persons above the rank of foreman, office and sales staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (10 employees in the unit).

5024-73-R: Canadian Construction, Building Maintenance and General Workers' Union (N.C.C.L.) (Applicant) v. L'Abbé Construction (Ontario) Ltd. (Respondent) v. Labourers' International Union of North America, Local 527 (Intervener).

Unit: "all carpenters, carpenters' apprentices and construction labourers in the employ of the respondent in the Regional Municipality of Ottawa - Carleton and the United Counties of Prescott and Russell, save and except non-working foremen and persons above the rank of non-working foreman." (10 employees in the unit).

5032-73-R: Oil & Gas Technicians, Service, Domestic, General Workers Union Local 1267 (Applicant) v. Berkeley Pump Co. (Canada) Ltd. (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at Ajax, save and except foremen, persons above the rank of foreman, office and sales staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (12 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5033-73-R: The Carpenters' District Council of Toronto and vicinity on behalf of Locals, 27, 666, 681, 1133, 1963, 3227, 3233, of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. Parmac Construction Ltd. (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering

in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

5038-73-R: International Association of Bridge, Structural and Ornamental Iron Workers - Local Union #700 (Applicant) v. The Lummus Co. Can. Ltd. (Respondent).

Unit: "all ironworkers in the employ of the respondent in the County of Lambton, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

5040-73-R: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW) (Applicant) v. Dunbar Aluminum Foundry Limited (Respondent).

Unit: "all employees of the respondent in Kitchener, Ontario, save and except foremen, persons above the rank of foreman, office and sales staff." (23 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5041-73-R: Warehousemen and Miscellaneous Drivers, Local 419 Affiliated with The International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. F. G. Lister & Co. Ltd. (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office and sales staff, and students employed during the school vacation period." (28 employees in the unit).

5042-73-R: International Union, United Plant Guard Workers of America, Local 1962 (Applicant) v. Scarborough Centenary Hospital Association (Respondent) v. Employee (Objector).

Unit: "all security guards employed by the respondent in the Borough of Scarborough, save and except sergeants, persons above the rank of sergeant and persons regularly employed for not more than 24 hours per week." (7 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5048-73-R: Service Employees Union, Local 204 Affiliated with the S.E.I.U. A.F. of L., C.I.O., C.L.C. (Applicant) v. Swiss Canadian Management Company Limited (Respondent).

Unit: "all employees of the respondent employed at 320, 330, 340 Dixon Road, in the Borough of Etobicoke, save and except supervisors, persons above the rank of supervisor, office staff and students employed during the school vacation period." (3 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5056-73-R: The Windsor Raceway Security Personnel Association (Applicant) v. Windsor Raceway Holdings Limited (Respondent).

Unit: "all security guards in the employ of the respondent at Windsor, save and except sergeants and persons above the rank of sergeant." (56 employees in the unit).

5060-73-R: United Brotherhood of Carpenters and Joiners of America, Local Union 93 (Applicant) v. Cousineau-Cameron Inc. (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the Regional Municipality of Ottawa - Carleton and the United Counties of Prescott and Russell, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

5071-73-R: Hotel & Restaurant Employees' and Bartenders' International Union - Local 412 (Applicant) v. Empire Hotel Company of Timmins, Limited carrying on business under the name of Grandview Hotel (Respondent).

Unit: "all tapmen, bartenders, beverage waiters, barboys and improvers in the employ of the respondent at Sault Ste. Marie, Ontario, save and except managers and persons above the rank of manager." (4 employees in the unit).

5073-73-R: United Brotherhood of Carpenters and Joiners of America; Local Union 446 (Applicant) v. Comstock International Limited (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in that portion of the District of Algoma south of the 49th parallel of latitude, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit).

5074-73-R: International Union of Operating Engineers, Local 793 (Applicant) v. The Lummus Company Canada Limited (Respondent).

Unit #1: "all employees of the respondent in the County of Lambton engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

Unit #2: "all employees of the respondent working as instrumentmen, rodmen, chainmen and Party Chief in the County of Lambton, save and except Field Engineer and persons above the rank of Field Engineer." (2 employees in the unit).

5075-73-R: Service Employees Union Local 268 (Applicant) v. District Memorial Hospital (Respondent).

Unit: "all employees of the respondent at Nipigon regularly employed for not more than 24 hours per week, save and except professional medical

staff, graduate nursing staff, undergraduate nurses, graduate pharmacists, undergraduate pharmacists, graduate dietitians, student dietitians, technical personnel, supervisors, foremen, persons above the rank of supervisor or foreman, office staff and students employed during the school vacation period." (7 employees in the unit). (FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT THE TERM TECHNICAL PERSONNEL COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS.).

5076-73-R: Service Employees Union Local 268 (Applicant) v. District Memorial Hospital (Respondent).

Unit: "all employees of the respondent at Nipigon, save and except professional medical staff, graduate nursing staff, undergraduate nurses, graduate pharmacists, undergraduate pharmacists, graduate dietitians, student dietitians, technical personnel, supervisors, foremen, persons above the rank of supervisor or foreman, office staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (22 employees in the unit). (FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT THE TERM TECHNICAL PERSONNEL COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS.).

5081-73-R: Ottawa Typographical Union, Local 102 (Applicant) v. Westboro Printers Ltd. (Respondent).

Unit: "all employees of the respondent at Ottawa, save and except supervisor and persons above the rank of supervisor." (8 employees in the unit).

5083-73-R: United Steelworkers of America (Applicant) v. Metropolitan Garage Doors Limited (Respondent).

Unit: "all employees of the respondent in Mississauga, Ontario, save and except foremen, persons above the rank of foreman, office and sales staff." (9 employees in the unit).

5086-73-R: Building Service Employees' International Union, Local 478, affiliated with AFL-CIO-CLC (Applicant) v. Lakewood Nursing Home (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at Huntsville, Ontario, save and except professional nursing staff, physiotherapists, occupational therapists, supervisors, foremen, persons above the rank of supervisor and foreman, office staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (31 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5095-73-R: The Carpenters' District Council of Toronto and vicinity on behalf of Locals 27, 666, 681, 1133, 1963, 3227, 3233, of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. Convert-A-Wall (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

5097-73-R: United Cement, Lime and Gypsum Workers International Union A.F.L., C.I.O., C.L.C. (Applicant) v. Wilroy Mines Limited (Milton Limestone Aggregates Division) (Respondent).

Unit: "all employees of the respondent at its Quarry and Plant in the Town of Milton, Ontario, save and except foremen, persons above the rank of foreman, dispatchers, office and sales staff and watchmen." (29 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5102-73-R: Labourers' International Union of North America, Local 527 (Applicant) v. Paul Daoust Construction Limited Limitee (Respondent).

Unit: "all construction labourers in the employ of the respondent in the United Counties of Stormont, Dundas and Glengarry, save and except non-working foremen and persons above the rank of non-working foreman." (27 employees in the unit).

5112-73-R: Central Ontario District Council United Brotherhood of Carpenters and Joiners of America (Applicant) v. Pinewood Construction (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the County of Simcoe, the District of Muskoka and the Townships of Rama, Mara and Thorah in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

5115-73-R: The Civil Service Association of Ontario (Inc) (Applicant) v. Muskoka Ambulance Service (Respondent).

Unit: "all employees of the respondent in Bracebridge and Gravenhurst, save and except supervisors, persons above the rank of supervisor and office staff." (20 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (THE BOARD NOTED THE FURTHER AGREEMENT OF THE PARTIES THAT THE PERSONS DESCRIBED AS DISPATCHER - PAYROLL AND DISPATCHER - BOOKKEEPING ARE OFFICE STAFF AND ARE THEREFORE EXCLUDED FROM THE BARGAINING UNIT.).

5116-73-R: Local 12-L, Graphic Arts International Union (Applicant) v. Source Data Control Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all lithographers, their apprentices and helpers, in the employ of the respondent at Rexdale, Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (24 employees in the unit).

5117-73-R: Labourers International Union of North America Local Union #493 (Applicant) v. Eastern Construction Company Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent within the radius of thirty-five miles from the City of Sudbury Federal Building, save and except non-working foremen and persons above the rank of non-working foreman." (7 employees in the unit).

5118-73-R: International Association of Bridge, Structural and Ornamental Iron Workers, Local Union 721 (Applicant) v. Superior Building Systems (Respondent).

Unit: "all ironworkers in the employ of the respondent in Metropolitan Toronto, the Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit).

5134-73-R: International Association of Bridge, Structural and Ornamental Iron Workers - Local Union #700 (Applicant) v. The Lummus Company of Canada (Respondent).

Unit: "all reinforcing rodmen in the employ of the respondent in the County of Lambton, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

5135-73-R: Labourers International Union of North America Local Union #493 (Applicant) v. Comstock International Ltd. (Respondent).

Unit: "all construction labourers in the employ of the respondent within the radius of thirty-five miles from the City of Sudbury Federal Building, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit).

5136-73-R: Warehousemen and Miscellaneous Drivers, Local 419 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Lyman Tube Division, Jannock Industries Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at Oakville, save and except foremen, persons above the rank of foreman, office and sales staff and students employed during the school vacation period." (15 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5137-73-R: Canadian Union of Public Employees (Applicant) v. Corporation of the Town of Simcoe (Respondent).

Unit: "all employees of the respondent in the Town of Simcoe save and except foremen, persons above the rank of foreman, office staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (19 employees in the unit).

5138-73-R: Canadian Union of Public Employees (Applicant) v. The Corporation of the County of Haldimand (Respondent).

Unit: "all employees of the respondent in the County of Haldimand, save and except office staff, foremen, persons above the rank of foreman, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (24 employees in the unit). (FOR PURPOSES OF CLARITY THE BOARD NOTED THAT THOSE PERSONS CLASSIFIED AS ASSISTANT GENERAL FOREMEN ARE EMPLOYEES INCLUDED IN THE APPROPRIATE BARGAINING UNIT.).

5146-73-R: The Employees' Association of Screen Print Display Advertising Limited (Applicant) v. Screen Print Display Advertising Limited (Respondent).

Unit: "all employees of the respondent at Brantford, save and except foremen, persons above the rank of foreman, office, creative and sales staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (111 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5152-73-R: Christian Labour Association of Canada (Applicant) v. Smith Brothers Painters and Decorators (Respondent).

Unit: "all painters and painters' apprentices in the employ of the respondent in the Counties of Peterborough, Victoria and the Provisional County of Haliburton, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit). (HAVING REGARD TO THE FOREGOING).

5162-73-R: Christian Labour Association of Canada (Applicant) v. Maple Engineering & Construction Company Limited (Respondent).

Unit: "all construction labourers, carpenters, carpenters apprentices and all employees engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same in the employ of the respondent in the Counties of

Brant and Norfolk, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit). (HAVING REGARD TO THE FOREGOING).

5166-73-R: Christian Trade Unions of Canada (Local 6) (Applicant) v. Waltson Properties Limited (Respondent).

Unit: "all construction labourers, carpenters and carpenters' apprentices in the employ of the respondent in the Counties of Brant and Norfolk, save and except non-working foremen and persons above the rank of non-working foreman." (11 employees in the unit). (HAVING REGARD TO THE FOREGOING).

5171-73-R: International Association of Bridge, Structural and Ornamental Ironworkers, Local Union 721 (Applicant) v. A. G. Baird Limited (Respondent).

Unit: "all ironworkers in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit).

5172-73-R: United Steelworkers of America (Applicant) v. Beckett Elevator Ltd. (Respondent) v. International Union of Elevator Constructors (Intervener).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office and sales staff and persons covered by an interim agreement between the respondent and the intervener made on May 25, 1972." (55 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5180-73-R: Christian Trade Unions of Canada (Local 6) (Applicant) v. Waltson Properties Limited (Respondent).

Unit: "all carpenters, carpenters' apprentices and construction labourers in the employ of the respondent in the County of Wentworth including part of Township of North Dumfries annexed from Beverly Township and the Township of Nassagaweya and the Town of Burlington in the County of Halton, save and except non-working foremen and persons above the rank of non-working foreman." (16 employees in the unit). (HAVING REGARD TO THE FOREGOING).

5181-73-R: International Union of Operating Engineers, Local 793 (Applicant) v. Schwenger Construction Limited (Respondent).

Unit: "all employees of the respondent in the Regional Municipality of Ottawa - Carleton and the United Counties of Prescott and Russell engaged

in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit).

5193-73-R: Christian Trade Unions of Canada (Local 6) (Applicant) v. Waltson Properties Limited (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the Regional Municipality of Niagara and the County of Haldimand, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit). (HAVING REGARD TO THE FOREGOING).

5207-73-R: Christian Trade Unions of Canada (Local 6) (Applicant) v. Waltson Properties Limited (Respondent).

Unit: "all construction labourers, carpenters and carpenters' apprentices in the employ of the respondent in the Regional Municipality of Waterloo except part of Beverly Township annexed by North Dumfries Township, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit). (HAVING REGARD TO THE FOREGOING).

5210-73-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. Pembina Construction Winnipeg Ltd. (Respondent).

Unit: "all construction labourers, carpenters and carpenters' apprentices in the employ of the respondent in the District of Kenora, including Patricia Portion, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit). (HAVING REGARD TO THE FOREGOING).

5222-73-R: International Union of Operating Engineers, Local 793 (Applicant) v. Cosmic Construction Limited (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

Applications Certified Subsequent to Pre-Hearing Vote

4828-73-R: Canadian Union of Public Employees (Applicant) v. North York General Hospital (Respondent) v. Canadian Union of General Employees (Intervener).

Unit: "all employees of the respondent at Metropolitan Toronto save and except Foremen, persons above the rank of Foreman, Professional Medical Staff, Graduate Nursing Staff, Undergraduate Nurses, Graduate Pharmacists, Undergraduate Pharmacists, Graduate Dietitians, Student Dietitians, Technical Personnel, Office and Clerical Staff, persons regularly employed for not more than 24 hours per week, students employed during the school vacation period and persons covered by a subsisting Collective Agreement between the respondent and the International Union of Operating Engineers, Local 796." (464 employees in the unit). (FOR THE PURPOSES OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT "TECHNICAL PERSONNEL" INCLUDES PHYSIOTHERAPISTS, PHYSIOTHERAPIST ASSISTANT, OCCUPATIONAL THERAPIST, OCCUPATIONAL THERAPY TECHNICIANS, SPEECH THERAPISTS, PSYCHOLOGISTS, PSYCHOMETRISTS, SOCIAL WORKERS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, AUDIOLOGY TECHNICIANS, MEDICAL LABORATORY TECHNOLOGISTS, AND STUDENTS TAKING A FORMAL COURSE WHICH LEADS TO THEIR CERTIFICATION AS REGISTERED TECHNICIANS, E.C.G. TECHNICIANS, OPERATING ROOM TECHNICIANS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS, PHARMACY TECHNICIANS, PHYSIOTHERAPY TECHNICIANS, MORGUE TECHNICIANS, AND SPECIMEN COLLECTION TECHNICIANS. "OFFICE AND CLERICAL STAFF" INCLUDES WARD CLERKS, CASHIERS, SWITCHBOARD OPERATORS AND SPECIAL DIET CLERKS.).

Number of names of persons on revised voters' list		360
Number of persons who cast ballots	275	
Ballots segregated and not counted	1	
Number of spoiled ballots	2	
Number of ballots marked in favour of applicant	204	
Number of ballots marked in favour of intervener	68	

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5047-73-R: International Union United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW) (Applicant) v. Rockwell International of Canada Limited (Respondent) v. Canadian Union of Operating Engineers, Local 107 (Intervener).

Unit: "all stationary engineers and persons primarily engaged as their helpers, operating and maintaining equipment on the respondent's premises at its plant at Chatham, Ontario, save and except foremen, persons above the rank of foreman, office and sales staff, and employees covered by subsisting collective agreements between the respondent and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) Local 35 and Local 127." (5 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR THE PURPOSE OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT PERSONS CLASSIFIED BY THE RESPONDENT AS "CHIEF ENGINEER" ARE INCLUDED IN THE BARGAINING UNIT.).

Number of names on persons on voters' list		5
Number of persons who cast ballots	5	
Number of ballots marked in favour of applicant	5	
Number of ballots marked in favour of intervener	0	

Applications Certified Subsequent to Post-Hearing Vote

4048-73-R: Nurses' Association Sunnybrook Hospital, Toronto (Applicant) v. Sunnybrook Hospital (Respondent) v. Sunnybrook Hospital Employees' Union Local 777 (Intervener) v. Group of Employees (Objectors).

Unit: "all registered and graduate nurses employed by the respondent in Metropolitan Toronto engaged in a nursing capacity, save and except head nurses, persons above the rank of head nurse, and persons regularly employed for not more than 24 hours per week." (357 employees in the unit). (HAVING REGARD TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER AND TO THE SUBMISSION OF COUNSEL WITH RESPECT THERETO, THE BOARD FOUND THAT HEAD NURSES EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT AND ARE THEREFORE EXCLUDED FROM THE BARGAINING UNIT. THE BOARD FURTHER FINDS THAT IN-SERVICE INSTRUCTORS AND NURSE CLINICIANS DO NOT EXERCISE MANAGERIAL FUNCTIONS AND ARE NOT EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT AND ARE THEREFORE INCLUDED IN THE BARGAINING UNIT. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT THE TERM HEAD NURSE INCLUDES THE S.S.R. HEAD NURSE AND HEAD NURSE #2 ...).

Number of names of persons on revised voters' list		371
Number of persons who cast ballots	318	
Ballots segregated and not counted	1	
Number of ballots marked in favour of applicant	284	
Number of ballots marked against applicant	33	

4696-73-R: London and District Building Service Workers' Union, Local 220, S.E.I.U., A.F.L., C.I.O., C.L.C. (Applicant) v. St. Mary's General Hospital (Respondent) v. The Canadian Union of Operating Engineers, Local 104 (Intervener).

Unit: "all employees of the respondent at Kitchener regularly employed for not more than twenty-four hours per week and students employed during the school vacation period save and except professional medical staff, graduate nursing staff, undergraduate nurses, graduate pharmacists, undergraduate pharmacists, graduate dietitians, student dietitians, technical personnel, supervisors, persons above the rank of supervisor,

office staff, student radiology technicians, student medical laboratory technicians and all those persons covered by subsisting collective agreements." (107 employees in the unit).

Number of names of persons on revised voters' list		97
Number of persons who cast ballots	33	
Number of spoiled ballots	1	
Number of ballots marked in favour of applicant	31	
Number of ballots marked against applicant	1	

4773-73-R: Graphic Arts International Union Ottawa, Local 224 (Applicant) v. National Printers Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent employed at Ottawa, save and except foremen, persons above the rank of foreman, office and sales staff and students employed during the school vacation period." (19 employees in the unit).

Number of names of persons on voters' list		17
Number of persons who cast ballots	17	
Number of ballots marked in favour of applicant	9	
Number of ballots marked against applicant	8	

APPLICATIONS FOR CERTIFICATION DISMISSED DURING FEBRUARY

No Vote Conducted

3952-73-R: International Printing Pressmen and Assistants Union (I.P.P. & A.U.) of North America (Applicant) v. Toronto Star Limited (Respondent) v. International Association of Machinists and Aerospace Workers (Intervener #1) v. Toronto Mailers' Union No. 5 (Intervener #2). (33 employees).

3954-73-R: International Printing Pressmen and Assistants Union (I.P.P. & A.U.) of North America (Applicant) v. Toronto Star Limited (Respondent) v. International Association of Machinists & Aerospace Workers (Intervener #1) v. Toronto Mailers' Union No. 5 (Intervener #2). (100 employees).

4153-73-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. Hoey & McMillan Ltd. (Respondent) v. Group of Employees (Objectors). (10 employees).

4255-73-R: Canadian Union of Public Employees (Applicant) v. The Manitoulin Board of Education (Respondent) v. Group of Employees (Objectors).

Unit: "all office, clerical and technical and non-teaching employees of the respondent at Little Current and Excelsior Post Office, save and except the superintendent of business administration and persons above the rank of superintendent of business administration, and persons covered by a certificate issued by the Board to the applicant dated July 30, 1973." (16 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

4348-73-R: General Truck Driver's Union Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 938 (Applicant) v. The T. Eaton Co. Limited (Respondent) v. International Union of Operating Engineers Local 796 (Intervener) v. Group of Employees (Objectors). (389 employees).

4352-73-R: Ontario Housing Corporation Employees Local 767, Canadian Union of Public Employees (Applicant) v. Del Zotto Property Management (Respondent) v. Canadian Union of Public Employees (Intervener). (61 employees).

4546-73-R: Canadian Union of Public Employees (Applicant) v. The Thunder Bay Public Library Board (Respondent). (16 employees).

4752-73-R: Operative Plasterers and Cement Masons International Association of the United States and Canada Local Union No. 124, Ottawa - Hull (Applicant) v. Roch Cayer Ltd. (Respondent) v. Group of Employees (Objectors). (17 employees).

4789-73-R: United Brotherhood of Carpenters and Joiners of America, Local Union 93 (Applicant) v. Cloverlawn Investments Limited (Respondent). (1 employee).

4926-73-R: Sault Ste. Marie Ont., Typographical Union Local 746 Int. Typographical Union (Applicant) v. Sault Star Limited (Respondent) v. Group of Employees (Objectors).

Unit #1: "all employees of the respondent at Sault Ste. Marie, who are regularly employed for not more than twenty-four hours per week and students employed during the school vacation period, save and except directors and managers, persons above the rank of director and manager and persons covered by subsisting collective agreements between the respondent and the applicant entered into on November 8, 1973 and between the respondent and Soo Printing Pressmen and Assistants Union No. 436, entered into on November 8, 1973." (95 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(BARGAINING UNIT #2 - SEE CERTIFICATION DISMISSED SUBSEQUENTLY TO POST-HEARING VOTE).

4941-73-R: United Brotherhood of Carpenters and Joiners of America, Local Union 1669 (Applicant) v. Anden Vinyl Products Ltd. (Respondent). (4 employees).

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4953-73-R: Civil Service Association of Ontario (Inc.) (Applicant) v. The Religious Hospitallers of St. Joseph of the Hotel Dieu at Kingston (Respondent). (18 employees).

4993-73-R: Teamsters Union Local 938 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Centeast Auto Terminals Ltd. (Respondent) v. Canadian Brotherhood of Railway, Transport and General Workers (Intervener) v. Group of Employees (Objectors). (8 employees).

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5025-73-R: The International Brotherhood of Electrical Workers Local 804 (Applicant) v. Steno Electric Limited (Respondent) v. Group of Employees (Objectors). (7 employees).

5031-73-R: Labourers' International Union of North America, Local 527 (Applicant) v. Anthes Equipment Ltd. (Ottawa Branch) (Respondent) v. Group of Employees (Objectors). (9 employees).

5101-73-R: International Union of Operating Engineers, Local 793 (Applicant) v. Standard Industries Ltd. and J. F. Marshall and Sons Limited (Respondent) v. United Cement, Lime and Gypsum Workers International Union (Intervener). (16 employees).

5105-73-R: Amalgamated Transit Union, Division 107 (Applicant) v. The Corporation of the City of Mississauga, Transit Division (Respondent). (60 employees).

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5132-73-R: United Paperworkers International Union (Applicant) v. Facelle Company Limited Subsidiary of Canadian International Paper Company (Respondent) v. Canadian Union of Operating Engineers (Intervener). (no employees).

5148-73-R: CUA Employees' Association (Applicant) v. Canadian Underwriters' Association (Respondent). (141 employees).

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5209-73-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. John Mostow Construction (Respondent). (2 employees).

Certification Dismissed Subsequent to Pre-Hearing Vote

4838-73-R: Canadian Union of Operating Engineers (Applicant) v. Estates General Investments Limited (Respondent).

Voting Constituency: "All employees of the respondent employed at 75 Wyndord Drive in Metropolitan Toronto, save and except Superintendent, persons above the rank of Superintendent, Security Guards, Office and Sales Staff." (28 employees).

Number of names of persons on revised voters' list		25
Number of persons who cast ballots	25	
Number of ballots excluding segregated ballots cast by persons whose names appear on voters' list	22	
Number of segregated ballots cast by persons whose names appear on voters' list	3	

BALLOT BOX SEALED

4959-73-R: International Woodworkers of America (Applicant) v. Northland Trailers (Soo) Limited (Respondent).

Voting Constituency: "All employees of the respondent at Sault Ste. Maries, save and except foremen, persons above the rank of foreman, office and sales staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (8 employees).

Number of names of persons on voters' list		8
Number of persons who cast ballots	8	
Number of ballots marked in favour of applicant	1	
Number of ballots marked against applicant	7	

Certification Dismissed Subsequent to Post-Hearing Vote

4451-73-R: The International Brotherhood of Painters and Allied Trades - Local Union 1891 (Applicant) v. Paragon Drywall Systems (Respondent).

Unit: "all painters and painters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foremen." (8 employees in the unit). (FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT DRYWALL TAPERS ARE INCLUDED IN THE BARGAINING UNIT.).

Number of names of persons on revised voters' list		6
Number of persons who cast ballots	5	
Number of ballots marked in favour of applicant	0	
Number of ballots marked against applicant	5	

4786-73-R: United Electrical, Radio and Machine Workers of America, (UE) (Applicant) v. Tridon Limited (Respondent) v. Tridon Employees Association (Intervener) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at Burlington, save and except assistant supervisors, persons above the rank of assistant supervisor, office and clerical staff, sales staff, technical staff, quality control staff and students employed during the school vacation period." (263 employees in the unit).

Number of names of persons on revised voters' list		213
Number of persons who cast ballots	202	
Number of spoiled ballots	1	
Number of ballots marked in favour of applicant	45	
Number of ballots marked against applicant	156	

4888-73-R: United Steelworkers of America (Applicant) v. Hill Refrigeration of Canada Ltd. (Respondent) v. Group of Employees (Objectors).

Unit: "all office, clerical and technical employees of the respondent company in Barrie, Ontario, save and except supervisor, persons above the rank of supervisor, salesmen, service representatives and employees covered by a subsisting collective agreement between the company and the United Steelworkers of America." (24 employees in the unit).

Number of names of persons on revised voters' list		25
Number of persons who cast ballots	24	
Number of spoiled ballots	1	
Number of ballots marked in favour of applicant	2	
Number of ballots marked against applicant	21	

4926-73-R: Sault Ste. Marie Ont., Typographical Union Local 746 Int. Typographical Union (Applicant) v. Sault Star Limited (Respondent) v. Group of Employees (Objectors).

Unit #2: "all employees of the respondent at Sault Ste. Marie, save and except directors and managers, persons above the rank of director and manager, persons regularly employed for not more than twenty-four hours per week, students employed during the school vacation period and persons covered by subsisting collective agreements between the respondent and the applicant, entered into on November 8, 1973 and between the respondent and Soo Printing Pressmen and Assistants Union No. 436, entered into on November 8, 1973." (15 employees in the unit).

Number of names of persons on voters' list		90
Number of persons who cast ballots	85	
Ballots segregated and not counted	3	
Number of ballots marked in favour of applicant	39	
Number of ballots marked against applicant	43	

(BARGAINING UNIT #1 - SEE APPLICATION FOR CERTIFICATION DISMISSED - NO VOTE CONDUCTED).

4960-73-R: The Canadian Union of Public Employees (Applicant) v. Sensenbrenner Hospital (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent in Kapuskasing, save and except professional medical staff, graduate nursing staff, undergraduate nurses, graduate pharmacists, undergraduate pharmacists, graduate dietitians, student dietitians, technical personnel, supervisors, persons above the rank of supervisor, office and clerical staff, persons regularly employed during the school vacation period and those persons covered by the subsisting collective agreement between the Nurses Association of Sensenbrenner Hospital." (77 employees in the unit).

Number of names of persons on revised voters' list		58
Number of persons who cast ballots	58	
Ballots segregated and not counted	1	
Number of ballots marked in favour of applicant	24	
Number of ballots marked against applicant	33	

4976-73-R: General Truck Drivers' Union Local 938 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Ariss Haulage Ltd. (Respondent).

Unit: "all employees of the respondent at Ajax, save and except dispatchers, persons above the rank of dispatcher, office and sales staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (32 employees in the unit).

Number of names of persons on revised voters' list	31
Number of persons who cast ballots	31
Number of ballots marked in favour of applicant	13
Number of ballots marked against applicant	18

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING FEBRUARY

4807-73-R: Ontario Housing Corporation Employees, Local 767, Canadian Union of Public Employees (Applicant) v. Maxi Plate Restaurants Inc. (Respondent). (13 employees).

4943-73-R: The Canadian Union of Public Employees (Applicant) v. The Leeds & Grenville County Board of Education (Respondent) v. Group of Employees (Objectors). (143 employees).

5043-73-R: Restaurant, Cafeteria and Tavern Employees Union, Local 254 of the Hotel and Restaurant Employees and Bartenders International Union (Applicant) v. The Ontario Jockey Club (Respondent). (123 employees).

5057-73-R: The Civil Service Association of Ontario (Inc.) (Applicant) v. Suburban Ambulance Service Co. Ltd. (Respondent). (23 employees).

5069-73-R: International Chemical Workers Union (Applicant) v. Union Gas Limited (Respondent). (4 employees).

5070-73-R: Textile Workers Union of America, AFL-CIO-CLC (Applicant) v. Unitex Carpet Mills Limited (Respondent). (47 employees).

5110-73-R: United Electrical, Radio and Machine Workers of America, (UE) (Applicant) v. Wilson & Cousins Co. Limited (Respondent). (9 employees).

5121-73-R: Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local 647 Affiliated with The International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Brookside Prices Dairy Ltd. (Respondent) v. Retail, Wholesale and Department Store Union, Local 440 (Intervener). (3 employees).

5126-73-R: Labourers' International Union of North America, Local 527 (Applicant) v. Fiberez Corrosion Molding Products Ltd., Foam Form Division (Respondent). (2 employees).

5145-73-R: Printing Specialties and Paper Products Union, Local 466 (Applicant) v. Anglo Packaging Company A Division of Gulf Pulp and Paper (Respondent). (96 employees).

5153-73-R: Canadian Food and Allied Workers Local Union 175, Chartered by the Amalgamated Meat Cutters and Butcher Workman of North America, AFL-CIO-CLC (Applicant) v. Bamford Meat Company (Respondent). (10 employees).

5165-73-R: International Association of Bridge, Structural Ornamental Ironworkers, Local 759 (Applicant) v. Pigott Project Management Limited (Respondent). (5 employees).

5174-73-R: Retail, Wholesale and Department Store Union, AFL:CIO:CLC (Applicant) v. Murphy Tobacco Limited (Respondent). (3 employees).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED OF
DURING FEBRUARY

2879-72-R: Llewellyn Beck (Applicant) v. International Brotherhood of Bookbinders, Local 28 (Respondent) v. Brooker Trade Bindery Ltd. (Intervener) (51 employees). (DISMISSED).

4224-73-R: Cornelius Wohlgemuth on Behalf of a Group of Employees (Applicant) v. International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America, Local 173 (Respondent) v. Dare Foods (Biscuit Division) Limited (Intervener #1) v. Local 173 Affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Intervener #2). (GRANTED).

Unit: "all employees of Dare Foods (Biscuit Division) Limited at Kitchener, Ontario, save and except foremen and foreladies, persons above the rank of foreman and forelady, plant nurse, office staff and salesmen." (306 employees in the unit).

Number of names of persons on revised voters' list		251
Number of persons who cast ballots	232	
Number of spoiled ballots	6	
Number of ballots marked in favour of Respondent	16	
Number of ballots marked against Respondent	210	

4878-73-R: Andrew Henry Tymec and Other Employees of Hiram Walker & Sons Limited (Applicant) v. The Distillery Workers' Union Local 61, Walkerville, Ontario, affiliated with the Distillery, Rectifying, Wine and Allied Workers' International Union, of America, affiliated with the AFL-CIO, CLC-OFL (Respondent). (GRANTED).

Unit: "all employees of Hiram Walker & Sons Limited at its Walkerville Plant, including Airport Road and Pike Creek and any newly acquired plants in Essex County in the Province of Ontario which may be operated and managed by Hiram Walker & Sons Limited, not including office workers, chemists, laboratory employees, power house employees, plant guards, foremen, or any employees possessed with authority to hire and discharge employees or who are direct representatives of the Employer, but including Assistant Foremen." (790 employees in the unit).

Number of names of persons on voters' list		604
Number of persons who cast ballots		604
Ballots segregated and not counted	141	
Number of spoiled ballots	1	
Number of ballots marked in favour of respondent	18	
Number of ballots marked against respondent	444	

4916-73-R: B. Bonora (Applicant) v. United Electrical Radio and Machine Workers of America (UE) & its Local 512 (Respondent).

- and -

4946-73-R: M. Orlando (Applicant) v. United Electrical Radio and Machine Workers of America (UE) & its Local 512 (Respondent).

- and -

4947-73-R: A. Robertson (Applicant) v. United Electrical Radio and Machine Workers of America (UE) & its Local 512 (Respondent). (3 employees). (DISMISSED).

4945-73-R: Oswald Reading (Applicant) v. Local 107 of the Hotel and Restaurant Employees' and Bartenders' International Union, A.F.L. C.I.O. C.L.C. (Respondent) v. Greenwolf Hotel Limited (Intervener). (1 employee). (GRANTED).

4962-73-R: Hector Lachance (Applicant) v. United Steelworkers of America Local 6363 (Respondent). (7 employees). (GRANTED).

5049-73-R: Gordon Walker and Associates, proprietors of the Town Tavern (Applicant) v. International Beverage Dispensers' and Bartenders' Union, Local 280 of the Hotel and Restaurants Employees and Bartenders' International Union Affiliated with A.F.L. - C.I.O. - C.L.C. (Respondent). (5 employees). (WITHDRAWN).

5066-73-R: A. Robertson, M. Orlando and B. Bonora (Applicant) v. United Electrical, Radio and Machine Workers of America (U.E.) and its Local 512 (Respondent) v. Standard Coil Products (Canada) Limited (Intervener). (3 employees). (DISMISSED).

5068-73-R: Corporation of the County of Bruce (Applicant) v. Canadian Union of Public Employees (Respondent). (42 employees). (WITHDRAWN).

5092-73-R: Robert Murray Bowen (Applicant) v. The International Brotherhood of Electrical Workers Local 105, Hamilton (Respondent) v. Nadalin Electric Company Limited (Intervener). (8 employees). (DISMISSED).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING

FEBRUARY

5150-73-U: Honeywell Controls Limited (Applicant) v. Stan Bany, et al. (Respondents). (GRANTED).

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5178-73-U: The Wood, Wire & Metal Lathers' International Union, Local 562 (Applicant) v. United Brotherhood of Carpenters and Joiners of America, Local 18 and Jack Tarbutt (Respondents). (GRANTED).

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5197-73-U: M. J. Finn Construction Limited, and Smith Bros. Painters and Decorators Ltd. (Applicants) v. M. Richtag, and The Ontario Council of The International Brotherhood of Painters and Allied Trades, Local 114 (Respondents). (WITHDRAWN).

5203-73-U: Campeau Corporation Limited (Applicant) v. The Carpenters' District Council of Toronto and Vicinity; Local Union No. 1747 of the United Brotherhood of Carpenters and Joiners of America; Frederick Leger; Matt Whelan; John Dyck; and Norman Lablance (Respondents). (WITHDRAWN).

5215-73-U: Campeau Corporation Limited (Applicant) v. The Carpenters' District Council of Toronto and Vicinity (Respondent). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING FEBRUARY

4818-73-U: The United Brotherhood of Carpenters and Joiners of America, Local Union 1669 (Applicant) v. Roy Construction (North Bay) Limited and Germain Hetu (Respondents). (GRANTED).

5063-73-U: The Ottawa Board of Education Employees' Association (Applicant) v. The Ottawa Board of Education (Respondent). (GRANTED).

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5077-73-U: United Electrical, Radio and Machine Workers of America (U.E.) and its Local 553 (Applicant) v. Doehler Canada Limited (Respondent). (WITHDRAWN).

5192-73-U: M. J. Finn Construction Limited and Smith Bros. Painters and Decorators Ltd. (Applicants) v. M. Richtag and The Ontario Council of the International Brotherhood of Painters and Allied Trades, Local 114 (Respondents). (WITHDRAWN).

5208-73-U: Campeau Corporation Limited (Applicant) v. The Carpenters' District Council of Toronto and Vicinity; Frederick Leger; Matt Whelan; John Dyck; and Norman Lablance (Respondents). (WITHDRAWN).

COMPLAINTS UNDER SECTION 79 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING
FEBRUARY

4014-73-U: United Brotherhood of Carpenters and Joiners of America, Local 2679 (Complainant) v. Star Chrome Manufacturing Limited (Respondent). (GRANTED).

4578-73-U: Wilson A. Plain (Complainant) v. Vallance, Brown, & Co. Ltd. (Respondent) v. International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 880 (Intervener). (DISMISSED).

4600-73-U: Pembroke Typographical Union (Complainant) v. Eddy Match, A Division of Eddy Match Company Limited (Respondent). (DISMISSED).

4764-73-U: General Truck Drivers' Union Local 938 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Complainant) v. J. D. Smith & Son Limited (Respondent). (DISMISSED).

4765-73-U: General Truck Drivers' Union Local 938 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Complainant) v. J. D. Smith & Son Limited (Respondent). (DISMISSED).

4812-73-U: John Rudd (Complainant) v. United Paperworkers International Union Local 646 and Kruger Pulp and Paper Co. Limited (Packaging Div.) Rexdale (Respondents). (DISMISSED).

4819-73-U: The United Brotherhood of Carpenters and Joiners of America, Local Union 1669 (Complainant) v. Roy Construction (North Bay) Limited and Germain Hetu (Respondents). (WITHDRAWN).

4870-73-U: Rudolf Kahlert (Complainant) v. Local P416 Canadian Food and Allied Workers (Respondent). (DISMISSED).

4892-73-U: United Cement, Lime and Gypsum Workers International Union, A.F.L., C.I.O., C.L.C. (Complainant) v. Brooklin Concrete Products Limited (Respondent). (WITHDRAWN).

4918-73-U: Canadian Union of Public Employees (Complainant) v. Hanmer Bus Line Inc. (Respondent). (WITHDRAWN).

4950-73-U: Arthur P. Forsyth (Complainant) v. International Chemical Workers' Union (Local 595) and Domtar Packaging Ltd. (Respondents). (DISMISSED).

4965-73-U: Amalgamated Clothing Workers of America (Complainant) v. Apex Pants Manufacturing Co. Limited (Respondent). (WITHDRAWN).

4966-73-U: Nurses' Association Norfolk General Hospital (Complainant) v. Norfolk Hospital Association (Respondent). (WITHDRAWN).

4977-73-U: Kenneth Thomas Robertson (Complainant) v. Victory Soya Mills, Vic Beyers Union President, Thomas Pellerin Chief Steward and Local 247 International Chemical Workers Union (Respondents). (DISMISSED).

5000-73-U: Local Union 2345 I.B.E.W. (International Brotherhood of Electrical Workers) (Complainant) v. The Corporation of the Town of Listowel (Respondent). (WITHDRAWN).

5008-73-U: William Starchuk (Complainant) v. Local 232 United Rubber Workers 210 7th St. (Respondent). (DISMISSED).

5009-73-U: Teamsters Union Local 938 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Complainant) v. Centeast Auto Terminals Limited (Respondent). (WITHDRAWN).

5014-73-U: Canadian Union of Public Employees (Complainant) v. Sensenbrenner Hospital (Respondent). (WITHDRAWN).

5015-73-U: Canadian Union of Public Employees (Complainant) v. Sensenbrenner Hospital (Respondent). (WITHDRAWN).

5064-73-U: Nurses' Association Victoria Hospital London (Complainant) v. Victoria Hospital London (Respondent) v. (WITHDRAWN).

5100-73-U: Labourers' International Union of North America, Local 183 (Complainant) v. A.R.G. Contracting Company Limited (Respondent). (WITHDRAWN).

5186-73-U: Warehousemen & Miscellaneous Drivers, Local 419 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Complainant) v. G. W. Ramm Company Ltd. (Respondent). (WITHDRAWN).

5213-73-U: Parviz Khatib-Zanjani (Complainant) v. Jacob & Thompson Limited (Respondent). (WITHDRAWN).

APPLICATION UNDER SECTION 37(3) DISPOSED OF DURING FEBRUARY

4443-73-M: John Inglis Co. Limited (Applicant) v. The United Steelworkers of America, Local 2900 (Respondent). (GRANTED).

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APPLICATION FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

5179-73-M: Laundry, Dry Cleaning & Dye House Workers International Union, Local 351 (Trade Union) v. Quality Knitting Limited (Employer). (GRANTED).

APPLICATIONS UNDER SECTION 55 DISPOSED OF DURING FEBRUARY

5045-73-R: International Beverage Dispensers' and Bartenders' Union Local 280 of the Hotel & Restaurant Employees' and Bartenders' International Union AFL - CIO- CLC (Applicant) v. Gordon Walker and Associates (Respondent). (GRANTED).

5108-73-R: The Canadian Union of Public Employees, C.L.C. Local 831 (Applicant) v. The Corporation of the City of Brampton (Respondent). (DISMISSED).

APPLICATIONS FOR DETERMINATION UNDER SECTION 95(2) DISPOSED OF DURING
FEBRUARY

4345-73-M: International Harvester Company of Canada Limited (Applicant) v. The International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (U.A.W.-C.L.C.) Local 35 (Respondent). (AFFIRMATIVE).

4728-73-M: International Association of Machinists and Aerospace Workers (Applicant) v. The Waterloo Manufacturing Company Ltd. (Respondent). (WITHDRAWN).

4955-73-M: The Corporation of the City of Timmins (Golden Manor Home for the Aged) (Employer) v. Canadian Union of Public Employees, Local 1140 (Trade Union). (AFFIRMATIVE).

REFERENCES TO BOARD PURSUANT TO SECTION 96

4881-73-M: Man of Aran Ltd. (Employer) v. Local 280 of the International Beverage Dispensers' & Bartenders' Union of the Hotel and Restaurant Employees and Bartenders' International Union, A.F. of L., C.I.O., C.L.C. (Trade Union). (AFFIRMATIVE).

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4893-73-M: Cooksville Steel Limited (Employer) v. International Association of Bridge, Structural and Ornamental Ironworkers, Local Union No. 721 Affiliated with the AFL-CIO (Trade Union). (DISMISSED).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

4532-73-R: Labourers' International Union of North America, Local 837 (Applicant) v. Bono General Construction Limited (Respondent) v. Group of Employees (Objectors). (REQUEST DENIED).

4751-73-R: United Paperworkers International Union (Applicant) v. Wilson-Munroe Company Ltd. (Respondent) v. Group of Employees (Objectors). (REQUEST DENIED).

4791-73-R: Canadian Union of Public Employees (Applicant) v. Plummer Memorial Public Hospital (Sault Algoma Ambulance Service) (Respondent) v. Service Employees International Union, Local 268 (Intervener). (REQUEST DENIED).

4854-73-R: Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local 647 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Canadian Food Products Sales Limited (Respondent). (REQUEST DENIED).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 95(2)

4735-73-M: United Steelworkers of America (Applicant) v. The W. S. Tyler Company of Canada Limited (Respondent). (REQUEST DENIED).

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9. Voters will be given a choice between the applicant and the intervener.

10. The matter is referred to the Registrar.

4457-73-M: Canadian Union of Public Employees, Local #1586 (Applicant) v. MEDEX NURSING CENTRE-OSHAWA (Respondent).

BEFORE: D. H. Kates, Vice-Chairman, and Board Members J. D. Bell and A. Main.

APPEARANCES AT THE HEARING: W. A. Acton and D. R. Lindsay for the applicant; J. T. Morin and G. Spear for the respondent.

DECISION OF THE BOARD: March 1, 1974.

1. This is an application made under section 95(2) of The Labour Relations Act wherein it is submitted that a question has arisen as to whether Mrs. Givenna Campbell classified by the respondent as social activities director is an employee for purposes of the Act.

2. The submission argued by the respondent in support of the position that Mrs. Campbell is a person exercising managerial functions within the meaning of section 1(3)(b) is two-fold. Firstly, it is suggested that Mrs. Campbell's duties with respect to planning, co-ordinating and administering the social activities of the residents of the respondent home requires sufficient independence of decision making prerogative so as to render her a managerial person. Secondly, it is urged that her duties and responsibilities are in effect part and parcel of those of the director of nursing. That is to say, Mrs. Campbell insofar as her functions are concerned is the "alter ego" of the director of nursing. In support of this proposition is cited the evidence of the fifty dollar per month budget conferred upon Mrs. Campbell with respect to unfettered purchases; her freedom to institute social activity programmes which are equated with the policies of the home and her relationship with the residents as confidante with respect to other employees.

3. It was conceded that Mrs. Campbell has no direct supervisory responsibility with respect to bargaining unit employees. Rather it is argued that her functions as social director has an indirect bearing on the reputation and the financial success of the respondent's enterprise to the extent that her programmes affect in a meaningful way the employment status of bargaining unit employees. In support of this proposition is cited the Board's decisions in The Globe and Mail Case 63 CLLC para. 16,290 and The Telegram Publishing Co. Ltd. case 59 CLLC para. 18,126.

4. This Board discerns no parallel between the functions of persons engaged by employers in newspaper publishing who are charged with the responsibilities of selling newspapers through independent

contractors and the functions of Mrs. Campbell and the correlative effect of those duties on the success of the respondents undertaking. The one function is inherently an integral part of the newspaper business; the other, is quite clearly peripheral and incidental to the running of a nursing home. Furthermore, this Board finds that Mrs. Campbell does not exercise duties and responsibilities remotely related to managerial functions under section 1(3)(b) of the Act.

5177-73-R: Canadian Union of Operating Engineers (Applicant) v. DOMINION CELLULOSE LIMITED (Respondent).

BEFORE: D. H. Kates, Vice-Chairman, and Board Members A. Main and F. W. Murray.

APPEARANCES AT THE HEARING: K. Gilbert for the applicant; H. M. Payette and D. M. Noon for the respondent.

DECISION OF THE BOARD: March 1, 1974.

1. This is an application for certification filed on February 11, 1974, by the applicant for its regular craft unit of stationary engineers.
2. It appears on February 12, 1974 an application for certification for an all employee unit was filed by the United Paperworkers International Union requesting a pre-hearing representation vote. The applicant in this case filed an intervention in "the Paperworkers" application presumably to protect its craft interests. (see; Board File No. 5190-73-R).
3. The instant application is complicated further by the fact that the applicant at one time held bargaining rights for its craft unit by virtue of a Board certificate dated April 16, 1969. (see; Board File No. 15053-68-R). It seems that the applicant engaged the respondent in bargaining but attempts to enter a collective agreement proved abortive. Since that time no efforts were made to renew attempts to enter a collective agreement nor was the issue pressed with respect to the continuing viability of the applicant's bargaining rights. In fact, the fact that the applicant has chosen to file another application for certification (albeit triggered by "the Paperworkers application") is corroborative of an abandonment of past bargaining rights and the Board so holds.
4. The effect of the above finding is to put the respondent in a situation where its employees (whatever the classification) are unrepresented for collective bargaining purposes. In short, there are no outstanding bargaining rights. It therefore follows that the applicant is in the happy position where it has applied for a craft unit of employees and the Board is bound by the mandatory

provisions of subsection 2 of section 6 to grant the applicant the craft unit requested.

5. The Board therefore finds that all stationary engineers and persons primarily engaged as their helpers employed by Dominion Cellulose Limited at its plant in Metropolitan Toronto, save and except the assistant Chief Engineer and persons above the rank of assistant Chief Engineer, constitute a unit of employees of the respondent appropriate for collective bargaining.

6. The respondent objected to the Board proceeding in this manner in that it will be denied the opportunity to make representations to the Board panel assigned to "the Paperworkers" application with respect to its representations on the appropriateness of an all employee unit.

7. The simple answer to the respondent's concern is that "the Paperworkers" application was a day subsequent to the applicant's in the instant case. In such circumstances the Board has various procedural alternatives it can pursue as outlined under subsection 3 of section 92 of the Act. In the instant case those procedures were governed by the mandatory provisions of subsection 2 of section 6 of the Act. Whatever representations that might be available to the applicant with respect to the appropriateness of an all employee unit whether in the instant application or in "the Paperworkers" application could not defeat the Board's jurisdictional obligation to grant the applicant its appropriate craft unit. In this regard should the respondent still be concerned that it has been denied an opportunity to make such representations as it deems necessary on the issue of the appropriate unit having regard to the above, the Board directs the respondent to section 95(1) of The Labour Relations Act.

...

9. A certificate will issue to the applicant.

4904-73-R: Sheet Metal Workers' International Association, Local Union #285 (Applicant) v. REXDALE HEATING LIMITED (Respondent).

BEFORE: D. H. Kates, Vice-Chairman, and Board Members J. D. Bell and O. Hodges.

DECISION OF THE BOARD: March 1, 1974.

1. By letter dated February 20, 1974, counsel for the respondent requests the Board to reconsider its decision issuing a certificate to the applicant conferring bargaining rights with respect to a group of the respondents employees.

2. The Board has studied the file in this matter in context of counsel's representations. This Board does not agree that the misunderstanding mentioned accrued to the respondent for the reasons extended. The Board notes that the respondent was given notice of all proceedings connected with the instant application and more particularly, it is noted that paragraph 12 of Form 3 (Notice of Application for Certification and of Hearing) indicates that "if you do not attend at the hearing, the Board may proceed in your absence and you will not be entitled to any further notice in the proceedings."

3. The Board proceeded with the hearing on the day scheduled and indicated in Form 3 (ie January 17, 1974) and no appearance was made by a representative for the respondent.

4. During the course of that hearing many of the matters raised in counsel's letters were discussed. More particularly, it was established that;

(i) the applicant was entitled to proceed with its application for certification under the regular provisions of the Act even though it may very well have been eligible to proceed under the construction industry provisions of the Act;

(ii) in absence of an agreement of the parties (namely the respondent), the Board was not prepared to issue a certificate wherein the bargaining unit was described in terms reserved peculiarly to construction industry applications;

(iii) The reason why the applicant proceeded under the regular provisions of the Act instead of the construction industry provisions was because of the Board's past practice of characterizing shop employees as off site employees and thereby excluding them from an appropriate construction industry unit.

(iv) Since the establishment of that practice, S106(b) has been introduced into the Act and as a result thereof there may be compelling reasons to persuade the Board to depart from its past practice;

(v) And notwithstanding the aforementioned, the fact that the applicant might very well have applied under the construction industry

provisions of the Act, it suffers no prejudice if it chooses to apply under the regular provisions of the Act.

5. Had the respondent chosen to attend the hearing, it would have had full opportunity to participate in these deliberations and would not find itself in the dilemma for which it now complains. Furthermore, we are not of the opinion that merely because the applicant has wrongly applied to the Minister for the appointment of a conciliation officer under the construction industry provisions of the Act and not the regular provisions there is justification for reconsidering our decision to grant bargaining rights for the unit of employees found appropriate.
6. The Board has examined the correspondence on file between the respondent and the Registrar of this Board and finds at no time was the representative of the respondent hampered (especially with respect to notice of the date of the hearings) because of any deficiency in his command of the English language.
7. For purposes of clarity the Board repeats that the unit found appropriate for collective bargaining in its decision of January 29, 1974 includes both shop employees and on site employees (who may be engaged on construction projects) working at the Town of Vaughan. In arriving at this conclusion with respect to the appropriate unit the Board heard representations from the representative of the applicant with respect to the operations of the respondent and the role played by employees in carrying out the functions of the enterprise. Namely, employees by virtue of the nature of the respondent's undertaking would come into view of the Board's notice of hearing (i.e. Form 5) and thereby would have adequate notice of the proceedings. Particular attention is directed to paragraph 1 of Form 5 and the Registrar's explanatory note appended thereto. In any event, the Board having regard to the decision of the S.C.C. in The Cunningham Drug Stores Ltd. Case 72 CLLC para. 14,147 at page 14,694 per Martland J. questions the status of the respondent to make representations with respect to the adequacy of the notice to employees in the circumstances of the present case.
8. Having regard to the aforementioned the Board denies the respondent its application for reconsideration.
9. By its letter dated February 25, 1974, the representative of the applicant returned the Board's certificate dated January 29, 1974, indicating that a typographical error was committed in the description in that Line (5) should have read "at the Township of Vaughan" rather than "Town of Vaughan".
10. In light of this "typographical error" a request was made to make the appropriate correction.

11. The Board wishes to clarify the description of the unit adverted to by the applicant in stating that no typographical error was made !

12. By enactment of The Regional Municipality of York Act R.S.O. 1970 c.408 SS2(1)(g) and (h) (and proclaimed on June 26, 1970) the Township of Vaughan ceased to exist. By the above enactment the Township of Vaughan was absorbed respectively by the Township municipalities of the Town of Richmond Hill and The Town of Vaughan. It is the latter town that the Board appended to the unit description in the certificate described in paragraph 9 herein.

13. The Board therefore directs the Registrar to return the certificate granted to the applicant as described.

5232-73-R: Labourers' International Union of North America, Local 493 (Applicant) v. MASCIOLI CONSTRUCTION COMPANY LIMITED (Respondent).

BEFORE: R. A. Furness, Vice-Chairman, and Board Members H. J. F. Ade and E. Boyer.

DECISION OF THE BOARD: March 4, 1974.

. . .

5. The Board further finds that this is an application for certification within the meaning of section 108 of The Labour Relations Act.

6. The respondent has requested a hearing of this application and in support of this request has stated in paragraph 14(3) of its Reply:

"(a) Some employees in the proposed bargaining unit have indicated that they are not in favour of being represented by the Labourers' International Union of North America, Local 493.

(b) We submit that the Labourers' International Union of North America, Local 493, does not represent the majority of employees in the proposed bargaining unit.

(c) We claim to be entitled by reason of such fact to non-certificate of this union as bargaining unit, or failing this, we claim that a representation vote be held to determine the wishes of the employees in the proposed bargaining unit."

7. The Board has considered the matters raised by the respondent in paragraph 14(3) of its Reply. With reference to the first point raised by the respondent, the Board notes that it has not received any statements of desire in opposition to this application for certification. The second point raised by the respondent is incorrect. The names which appear on five of the six combination applications for membership and receipts filed by the applicant correspond to five of the nine names appearing on the list of employees filed by the respondent. The third point raised by the respondent does not support its position that it is entitled to "non-certification". However, having regard to the membership position of the applicant, the applicant is not entitled to outright certification, but is in a position to participate in a representation vote.

8. In applications for certification filed under the construction industry provisions of The Labour Relations Act, the Board need not hold a hearing. Reference is made to section 91(13) of The Labour Relations Act. The Board has considered the representations of the respondent and is of the view that no useful purpose would be served in holding a hearing of this application. Accordingly, the request of the respondent for a hearing of this application is denied. In the event that the respondent is of the opinion that the Board has erred in some material respect, it is open to the respondent to request the Board to reconsider its decision pursuant to the provisions of section 95(1) of The Labour Relations Act.

9. The respondent has requested that the Board limit the bargaining unit to "all labourers employed by the respondent while engaged in the installations of sewers and water mains". The Board sees no reason to determine a bargaining unit in the terms proposed by the respondent. See the Eilpro Holdings Inc. case, OLRB Rep. March 1973, p. 169.

10. In the circumstances of this application, the Board further finds that all construction labourers in the employ of the respondent within a fifty mile radius of the Timmins Federal Building, save and except non-working foremen persons above the rank of non-working foreman and persons covered by collective agreements between the respondent and the International Union of Operating Engineers Local 793, dated September 1, 1972, and between the respondent and the Teamsters' Local Union No. 230, Ready Mix, Building Supply, Hydro and Construction Drivers, Warehousemen and Helpers, made on November 30, 1972, constitute a unit of employees of the respondent appropriate for collective bargaining.

. . .

12. A representation vote will be taken of the employees of the respondent in the bargaining unit. All employees of the respondent in the bargaining unit on the date hereof who do not voluntarily their

employment or who are not discharged for cause between the date hereof and the date the vote is taken will be eligible to vote.

13. Voters will be asked to indicate whether or not they wish to be represented by the applicant in their employment relations which the respondent.

14. The matter is referred to the Registrar.

4738-73-U: United Radio Electrical and Machine Workers of America (Complainant) v. BEAVER ELECTRONICS LIMITED (Respondent).

BEFORE: D. H. Kates, Vice-Chairman, and Board Members H. J. F. Ade and P. J. O'Keefe.

APPEARANCES AT THE HEARING: R. Russell and P. MacNeil for the complainant; H. M. Rossman and G. Baxter for the respondent.

DECISION OF VICE-CHAIRMAN D. H. KATES AND BOARD MEMBER P. J. O'KEEFFE: March 4, 1974.

1. This is a complaint filed under section 79 of The Labour Relations Act where the complainant alleges violation by the respondent of subsection 2 of section 70 of the Act in that at a time prohibited by that provision the employer without the consent of the trade union altered the rights, privileges and duties of employees.

2. The parties are in basic agreement on the facts giving rise to the instant complaint. On October 22, 1973, the complainant applied to the Board to be certified for a group of the respondent's employees (see; The Beaver Electronics Ltd. Case Board File No. 4634-73-R). The Registrar in the normal course set a terminal date (October 31, 1973) and notified the parties of a hearing date (November 16, 1973) into all matters arising out of and incidental to the application. On November 2, 1973 the respondent caused to be posted on its premises a memorandum dated October 31, 1973 wherein it was indicated that due to unfulfilled sales expectations and the resultant stockpiling of inventory a reduction in working hours from 40 to 35 hours per week was necessary. The notice also indicated that should the downward trend in sales continue a further reduction in working hours would ensue and in addition possible lay-offs. The revised schedule was instituted on November 5, 1973 and continued up to December 13, 1973 when the 40 hour schedule was restored. At no time before the institution of the reduced work week was the consent of the applicant trade union secured. The Board does note however that discussions on the matter were initiated by a representative of the trade union for purposes of persuading the respondent to reconsider its position.

These discussions however were not fruitful and the instant complaint was filed on November 9th, 1973.

3. On November 16th, the hearing with respect to the certification application proceeded as scheduled and a certificate granting bargaining rights issued on December 20, 1973.
4. Counsel for the respondent raised several issues before the Board with respect to the propriety of the complaint where were characterized as being of "a jurisdictional nature". Firstly, it was suggested that because no corollary amendment was made to clause (a) of subsection 1 of section 79 of The Labour Relations Act at the time when subsection 2 of section 70 was introduced into the Act (see; Labour Relations Amendment Act S.O. 1970, c.85, S27), the Board is without jurisdiction to confer any relief even if it were satisfied that a violation had in fact transpired. Counsel submitted that insertion of the words "trade union" in clause (a) of subsection 1 of section 79 would be a condition precedent to the assumption of jurisdiction to grant relief for a violation of the provision of the statute in issue.
5. The Board rejects counsels submission in that the operative provision for granting relief with respect to unfair labour practice complaints is submission 4 of section 79. Furthermore, this Board cannot conceive the reason for the insertion of the words "trade union" (even assuming some merit to counsel's position) where the relief requested is compensation for and on behalf of "employees".
6. Counsel also argues the exclusio unius maxim in support of the proposition that deletion of the words "... the rates of wages or any other term and condition of employment..." from subsection (2) of section 70 where the phrase is otherwise contained in subsection (1) is an indication of an intention by the Legislature that the Board not deal with the facts and circumstances presently confronting the Board. The Board can discern no distinction between counsels position and the position taken by counsel in The Ottawa General Hospital Case OLRB M.R. June 1972 681 to persuade the Board to reach a different conclusion in the instant case.
7. Mr. Glenn I. Baxter, manager of the respondent company and its subsidiaries, was called to give evidence with respect to matters in connection with the instant complaint. Mr. Baxter indicated that his duties and responsibilities as manager require him to report to the president and other executive officers with respect to the operations of all departments of the respondent's undertaking. Among his duties is the supervision of the plant operations including the scheduling and assignment of work. The witness gave evidence with respect to weekly fluctuations of employee work schedules dating as far back as June 1969 and up to and including December, 1973. His testimony with respect to the variation in number of hours worked per employee over this period is based on documents filed with

"Statistics Canada" (prior to January 11, 1971 otherwise known as "The Dominion Bureau of Statistics") in compliance with the requirements of The Statistics Act R.S.C.C. S-116 as repealed and replaced by The Statistics Act S.C. 1970-71-72, C15.

8. These documents delineate a sample work week submitted on a monthly basis indicating the total number of employees employed during a particular week, the total hours worked by all employees in that week and their gross pay. Distinctions with respect to information required are made between salaried employees and wage earners whose hours are recorded. It is by dividing the total number of employees into the total number of hours worked that the average number of hours worked per week by an individual employee is ascertained. The fluctuations in number of hours worked per week by employees of the respondent over a 3½ year period were determined by Mr. Baxter in this fashion.

9. At this juncture, the Board proposes to deal with the evidentiary value to be attached to these documents. Mr. Russell, the representative for the complainant, questioned with some vigour the weight to be attached to these documents. In this regard, the Board notes that the documents were filed pursuant to the provisions of The Statistics Act (supra) which requires such persons shall answer the inquiries thereon and return the form and answers to Statistics Canada properly certified as accurate...(see; Section 22). Furthermore, every person who, without lawful excuse does not comply with the requirements for information requested (and particularly with respect to labour and manpower under section 21(h)) or does comply in a negligent, deceptive or misleading manner is liable on summary conviction to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding three months or both. (see section 29(a)(b)). Furthermore, there was no suggestion during the course of the hearing that the accuracy of the figures contained in these documents should be subject to challenge on any grounds.

10. In addition, The Board notes that no attempt was made by the representative for the complainant to cross-examine Mr. Baxter with respect to the oral testimony given nor with regard to his understanding of the documents and the inferences that the Board should draw therefrom. In short, the Board finds no reason to question the authenticity of the documents nor the credibility of the witness through whom the documents were presented.

11. It is within the perspective of the respondent's corporate history of fluctuating work schedules that the witness, Mr. Baxter, proposed to explain the circumstances surrounding the complainant's allegations. The matter of increasing and decreasing working hours is a normal practice of the company. In times of market successes, hours per week would increase; and, in times of disappointment the opposite would occur. When such changes were necessary, they are

normally introduced in a democratic fashion. Employees are informed in advance of the company's position through group leaders who would invite employees in a given situation to elect the options made available to them. For example, on one occasion rather than introduce intermittent overtime in times of a busy market, the respondent acceded to the employees' request to add a flat overtime rate of one half hour. On another occasion in July of 1973, when the respondent transferred its operations to larger premises the employees requested a reduction in hours because of the increased travelling time to and from work caused by the move. Because of the enlarged premises, the employer was able to accede to the request by hiring more employees.

12. Hence, in the autumn of 1973 market expectations proved disappointing. Comparative figures were submitted to the Board to illustrate the respondent's business difficulties. Employees in the normal course were told of the imminent necessity to reduce working hours. They were informed by the memorandum posted on November 2, 1973 and through informal discussions with the group leaders and Mr. Baxter, himself. The options put to them were either lay-off for a few employees or a reduced work week for all. The only persons excepted were employees in the tower and antennae department. But the vast majority of employees in the other departments were affected. These employees, once having the respondent's circumstances explained to them, accepted the necessity of a cut back in production and the ancillary requirement to alter the number of hours worked. The only matter left to be determined was whether the employees were to accept a reduced work schedule based on a four day or a five day week. The employees by a written poll chose the latter. In short, at all material times the employees participated to some extent in the respondent's decision to implement measures to remedy the situation.

13. The representative for the complainant bases its claim for relief on the simple premise that the introduction of the reduced work week at a time prohibited by the statute ipso facto constitutes a violation of the Act. In accordance with this strict construction of the Act, the Board "must" grant the employees affected the relief requested. That is to say, the difference in wages that employees otherwise would have received had there been no violation.

14. Counsel argues two grounds in defence of the respondent's actions. Firstly, it is submitted that no "alteration" within the meaning of section 70(2) transpired in that the introduction of the reduced work week in the manner described was an occupational hazard which the employees themselves were conditioned to expect when sales prove disappointing. What occurred at the time relevant to the complainant's application for certification would have happened in any event. The information provided in the documents required by Statistics Canada are argued in support of this position. This Board agrees, on the evidence, that the employer was confronted

with an unhappy market situation. It further finds that the measures taken on November 5, 1973 were resorted to in good faith and without an anti-union animus. Furthermore, the Board has no reason to doubt that the respondent at all material times was attempting to strike a balance between the financial interests of the enterprise and a reasonable and fair response to the situation where the employees were affected.

15. Having made these assertions, the Board still cannot remain oblivious to the intentions of the Legislature in enacting subsection 2 of section 70. Those intentions were to impose "a freeze" on working conditions from both the employers' and employees' perspective pending the disposition of an application for certification. The purpose of this "freeze" is to stay any interruption in the employment relationship which may influence employees with respect to representation by an applicant trade union during the Board's processes of resolving issues relevant to the application. It is in this light that the Board proposes to deal with the respondent's first argument.

16. The documents submitted to the Board were subjected to close scrutiny. As a result of this intensive investigation this Board cannot conclude, as counsel suggests the Board should, that the respondent has a past practice or a pattern of reducing the work schedules when market failures occur. The only period in which the variation in the total number of hours worked reflects an uneven average work week is in the periods between June 1969 and April 1970. But it appears to the Board from the figures provided that the reduced work schedules were affected by the employment on a regular basis of casual workers. And the other period where a reduced work schedule seems to have been introduced was the period between May 1972 and the launching of the application in October 1973. But even though there was some indication of variations in average weekly hours worked by an employee, the figures also indicate that the variations as reflected in the total number of hours worked could also be attributed to the increases and decreases in the number of employees employed during that period. The Board also must take into account the fluctuations in the average number of hours worked per employee caused by the transfer of the employers plant operations to larger premises in July, 1973 where space was available for the stockpiling of inventory. But the most telling figures made available to this Board was for the period between April 1970 and April of 1972. During this two year period there were major fluctuations in total number of hours worked yet the average number of hours worked per week by an employee remained constant. This circumstances is easily explained by noting the extreme differentials in the total number of employees employed at various times during that period.

17. The Board therefore must draw a different conclusion that that urged by counsel. This Board finds that it was more the employers

practice to hire more employees in times of market success and to lay off employees in times of dismal sales. This is not to suggest however that the respondent would not from a business view engage in changing the working hours of employees when prevailing circumstances dictated. But the Board cannot find that the introduction of a reduced work week in November 1973 was part of a past pattern justifying the conclusion that no "alteration" in working conditions (and thereby the rights and privileges) of employees occurred.

18. The second argument put by counsel suggested that employees by participating in the decision making process with respect to the re-scheduling of the work week waived any rights to relief under the Act. That is to say, the complainant union, as agent, must abide by the decision of the persons it purports to represent. The employees by admitting the necessity of the reduced work week waived the requirement of the employer to seek the unions consent. This Board would find some merit in counsel's argument had this case turned on allegations pursuant to subsection 1 of section 70 of the Act. That is to say, in the circumstances contemplated by that provision the trade union (whose consent would be required) would be entitled to give notice under sections 13 or 45 of the Act and thereby would be a bona fide bargaining agent. In short, no representative relationship (save with respect to membership evidence) is established for purposes of subsection 2 of section 70 until or unless a certificate issues. And in that event, should an employer seek employee approval of a re-scheduling of working hours at a time prohibited by subsection 1, that employer may very well be in violation of subsection 1 of section 59 of the Act. In that case, employees who have waived privileges at the behest of an employer for purposes of subsection 1 of section 70, may have put the employer in a position where he is answerable to allegations of bargaining with employees at a time when "a trade union continues to be entitled to represent employees in a bargaining unit..." In other words the Legislature in its wisdom has amply contemplated the position taken by counsel and thereby this Board must reject the argument submitted.

19. It follows therefore that the Board finds the respondent in breach of subsection 2 of section 70 of The Labour Relations Act in that it failed to obtain the consent of the complainant trade union prior to implementing its decision of November 5, 1973.

20. The Board has explored with the most searching concern the matter of compensation in this case. On the one hand it should be stressed that the Board must not condone a violation of the Act however innocent are the circumstances that give rise to that violation. Nevertheless the Board notes that the notice of the impending reduction in the work schedule was posted after the terminal date set by the Registrar in the complainants application for certification. Furthermore, the Board has examined the proceedings in that application and notes that a certificate issued the complainant without the

necessity of holding a representation vote. In short, the respondents violation, fortuitously, was without prejudice to the ultimate outcome of that application. Nevertheless, had the applicant only been in a vote position, employees may very well have been influenced by the respondents magnanimity. In short, it was only because the circumstances were beyond the control of both respondent and employee that no prejudice transpired with respect to the disposition of the application. On the other hand, this Board has considered the fairness of according to employees a benefit in terms of compensation for a wrongdoing in which they played a substantial and significant part. Had the respondent in the circumstances unilaterally imposed a change in the work schedule without the complainant's consent, this Board would not hesitate to grant the employees full compensation. But having regard to the employees' role in this entire transaction, this Board determines that the employees should only receive half the compensation they would have otherwise earned in wages had no alteration in their working conditions occurred.

21. Accordingly, the Board therefore directs that the respondent compensate the employees affected by the respondent's rescheduling of work hours for loss of wages in an amount to be determined by the parties from the date of implementation to the date of restoration. Failing agreement by the parties as to the amount of compensation, the Board shall remain seized of the matter.

DECISION OF BOARD MEMBER H.J.F. ADE: March 4, 1974.

1. I dissent.
2. Section 70 subsections (1) and (2) of The Labour Relations Act read as follows:

"70. (1) Where notice has been given under section 13 or section 45 and no collective agreement is in operation, no employer shall except with the consent of the trade union, alter the rates of wages or any other term or condition of employment or any right, privilege or duty, of the employer, the trade union or the employees, and no trade union shall, except with the consent of the employer, alter any term or condition of employment or any right, privilege or duty of the employer, the trade union or the employees,

- (a) until the Minister has appointed a conciliation officer or a mediator under this Act and,

- (i) seven days have elapsed after the Minister has released to the parties the report of a conciliation board or mediator, or
- (ii) fourteen days have elapsed after the Minister has released to the parties a notice that he does not consider it advisable to appoint a conciliation board.

as the case may be, or

- (b) until the right of the trade union to represent the employees has been terminated,

whichever occurs first.

(2) Where a trade union has applied for certification and notice thereof from the Board has been received by the employer, no employer shall, except with the consent of the trade union, alter the rights, privileges or duty of the employer or the employees until,

- (a) the trade union has given notice under section 13, in which case subsection 1 applies; or
- (b) the application for certification by the trade union is dismissed or terminated by the Board, or withdrawn by the trade union. (emphasis added)

3. The respondent reduced the working hours of its employees. Of that, there is no question. However, the motive of the respondent in making such reduction is, in my view, extremely important. The evidence clearly established the respondent's justification for this course of action.

4. This is a complaint alleging a violation of subsection (2) of section 70 wherein the legislature concerned itself with the altering of specifically and solely, "rights, privileges or duty". May it be fairly said that the reduction of the hours of work in all the circumstances of this complaint is an alteration of the rights, privileges or duty of the respondent's employees; or for that matter of the respondent? Was there an inalienable right to a 40 hour work week? Was such 40 hour work week a privilege? Was the respondent under a continuing duty to provide a 40 hour week? In my view the answers to all these questions which I pose, are unquestionably in

the negative. This finding on my part can only be reinforced when as the evidence showed without doubt or rebuttal that it was economically unsound for the respondent to continue the 40 hour week.

5. A comparison between subsections (1) and (2) of section 70 of the Act, in my view, clearly establishes that the conduct of the respondent is not in breach of subsection (2). Whereas, subsection (1) uses the language "alter the rates of wages or any other term or condition of employment or any right, privilege or duty", subsection (2) is quite different, in that it uses the language "alter the rights, privileges or duty". Clearly, the Legislature envisaged two circumstances depending upon the state of relationship between the trade union and the employer. Subsection (1) imposes, by its very terms, a far greater restraint on an employer than does subsection (2). No doubt, this reflects the concern of the Legislature over the nature of the relationship between a trade union and an employer at various points of time.

6. Under subsection (1) of section 70 of the Act, a greater restraint is placed on an employer once a trade union has established its position as the bargaining agent of the employer's employees. Subsection (2) of section 70, on the other hand, is not as onerous on the employer and in so doing, the Legislature has no doubt taken into account the fact that it pertains to the situation prevailing where a trade union has not yet established that it is the bargaining agent of the employer's employees.

7. Any other interpretation such as the one adopted by the majority, has the effect of regarding the words "alter the rates of wages or any other term or condition of employment" in section 70 subsection (1) as mere surplusage. The conduct of the respondent in reducing the number of hours of its employees constitute an altering of the "rates of wages or any other term or condition of employment as dealt with in section 70(1). However, this complaint does not allege a breach of subsection (1).

8. The recent provincial court decision in The Queen v Labatt's Ontario Breweries Limited (per Dneiper J.) dated October 16, 1973 supports the conclusion reached with respect to the interpretation conferred on S70(2) and as expressed above.

9. However, even if I am wrong in my interpretation of subsections (1) and (2), there should be no compensation to the employees in all of the circumstances of this complaint. The employees of the respondent have already in toto been compensated by the job security afforded them. By reducing the number of hours of work, the respondent, after consulting the employees, and obtaining their approval, avoided the necessity of laying off a limited number of its employees. The respondent, in adopting this measure, was placed in an awkward situation

and should not suffer for having acted in a fair and humane way towards all of its employees.

10. The complainant's action is ill-conceived and spiteful and is, in fact, a request to the Board for double indemnification for the employees of the respondent. Subsection (2) of section 70 was never intended to be interpreted by the Board as in the nature of a sporting gamble by trade unions.

4801-73-R: Canadian Union of Public Employees (Applicant) v. THE CORPORATION OF THE TOWNSHIP OF WOODHOUSE (Respondent).

BEFORE: D. H. Kates, Vice-Chairman, and Board Members O. Hodges and J.E.C. Robinson, Q.C.

DECISION OF THE BOARD: March 5, 1974.

1. The Board finds that the applicant is a trade union within the meaning of section 1(1)(n) of The Labour Relations Act.

2. The Board notes the agreement of the parties that Mr. James M. Fair classified by the respondent as building inspector, welfare officer and by-law enforcement officer does not exercise managerial functions nor is employed in a confidential capacity in matters relating to labour relations.

3. The parties are in dispute with respect to the status of Claire Aileen Simons classified by the respondent as Deputy Clerk-Treasurer. The examiner's report indicates that at no time does Miss Simons hire, fire, grant overtime or time off. Nor does she make recommendations to Municipal Council with respect to these matters that are generally characterized by the Board as indicia of managerial functions. The witness has access to the employees' personnel records but no evidence was adduced as to whether her duties require her to use these records. Furthermore, the witness opens letters that are addressed to the respondent, attends the phones and performs general secretarial duties. In fact, the only difference between the witness's functions and the functions of the other office girl employed by the respondent is that she attends council meetings (which are held in public) to take minutes. In all other respects including the shared duties of preparing payroll, her functions are consistent with those of a secretary employed by the respondent.

4. It appears by operation of The Municipal Act R.S.O. 1970 C. 284 SS 215(2) and 218(2) the classification of Deputy Clerk-Treasurer is to have all the powers and duties of the Treasurer. The argument is therefore submitted that this should justify the exclusion of Miss Simons from the unit. The Board in having regard

to the evidence contained in the Examiner's Report notes that it may very well be that the Deputy Clerk-Treasurer holds powers similar to those of the Treasurer. Nevertheless, when the opportunity has arisen in Miss Simons case to exercise those powers she has either deferred to the authority of the Township Reeve or has awaited the instructions of Mr. Kent, the Treasurer before acting. The Board therefore finds on the evidence that Miss Simons does not exercise managerial functions nor is she employed in a confidential capacity in matters relating to labour relations within the meaning of section 1(3)(b) of the Act.

5. The Board further finds that all office, clerical and technical employees of the respondent at the Township of Woodhouse, save and except Clerk Treasurer and persons above the rank of Clerk Treasurer, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period, constitute a unit of employees of the respondent appropriate for collective bargaining.

. . .

7. A certificate will issue to the applicant.

5156-73-R: The Canadian Union of Public Employees (Applicant) v. KIRKLAND LAKE BOARD OF EDUCATION (Respondent) v. Employees (Objectors).

BEFORE: R. A. Furness, Vice-Chairman, and Board Members D. B. Archer and J. D. Bell.

APPEARANCES AT THE HEARING: W. A. Acton for the applicant; J. Yakubowski, R. R. Wilson, W. Nicholls and D. W. McEntee for the respondent; no one appeared for the objectors.

DECISION OF THE BOARD: March 6, 1974.

1. The Board finds that the applicant is a trade union within the meaning of section 1(1)(n) of The Labour Relations Act.

2. The Board received two letters from two employees who objected to this application for certification. The first letter, which is dated February 14, 1974, expresses opposition to being included in the bargaining unit. This letter proceeds to itemize this person's objections to the applicant. This person was not present at the hearing. However, at the hearing, the classification in which this person is employed was agreed by the applicant and the respondent to be excluded from the proposed bargaining unit.

3. The second letter, which is dated February 18, 1974, informs the Board that the writer was absent from his employment during the period when the notice of this application was posted and was therefore not given an opportunity to oppose this application for certification. The Board notes that there is no evidence before it to indicate that the writer of the second letter is a member of the applicant. In these circumstances, even if the writer of the second letter had filed a timely statement of desire in opposition to this application, it could not have affected the membership position of the applicant. The writer also itemizes a critique of the manner in which the applicant failed to approach some of the employees and enlist their support and membership (including the writer). In addition, the writer protests the lack of communication between the applicant and some of the employees affected by the application.

4. The applicant, of course, is not obliged to approach every member of a proposed bargaining unit. In addition, there is no duty on the applicant to solicit membership from all members of the proposed bargaining unit. The conduct of an organizational campaign by a trade union, absent any conduct contrary to The Labour Relations Act (and there is no allegation or indication of such behaviour in this application), is essentially a matter of concern for the trade union.

...

3071-72-R: International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW), Local 984, International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW) (Applicants) v. CANAC SHOCK ABSORBERS LIMITED (Respondent) v. Canadian Acme Screw & Gear Limited (Intervener).

BEFORE: Rory F. Egan, Vice-Chairman, and Board Members P. J. O'Keeffe and J. E. C. Robinson, Q.C.

APPEARANCES AT THE HEARING: T. E. Armstrong and R. White for the applicants; Richard H. Baker for the respondent; John P. Sanderson for the intervener.

DECISION OF RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBER P. J. O'KEEFFE:
March 7, 1974.

1. A dispute having arisen between the parties as to the effect to be given to the findings of the Board in its decision dated October 11, 1973, the applicants requested the Board to exercise its powers under section 95(1) of the Act in order to clarify its decision. The respondent and the intervener opposed the granting of the request.

2. The Board directed a hearing to afford the applicants the opportunity to show cause why the Board should entertain the request for clarification. One of the reasons for requiring the applicants to show cause is the concern of the Board for the serious consequences that might affect all of its decisions if it were to appear to accept the proposition that it is automatically required to settle disputes arising out of its decisions. The Board shares the apprehension expressed by counsel for the intervener that such a practice, if allowed to develop, could lead to interminable proceedings and a lack of finality in all its decisions.

3. In the past, the Board has consistently refused to exercise its powers under section 95(1) unless the party requesting review intends to adduce new evidence which could not have been previously obtained by reasonable diligence and which would, if heard, be virtually conclusive of the issues involved or unless the decision contains an error. Neither will the Board reconsider a decision where a party wishes to raise arguments which it might have raised before the Board at the hearing. There is no suggestion of new evidence or argument not available at the hearing in the present request. There must therefore be cogent and compelling reasons present in order for the Board to enlarge the grounds upon which it has acted in the past.

4. It was the initial inclination of the Board to advise the applicant to follow the normal course and attempt to implement the decision in accordance with its interpretation and, if challenged, have the decision interpreted by whatever tribunal might be called upon to resolve the issue raised by the challenge. In the present case, however, proceedings have already extended over a protracted period and it is apparent that the route referred to above might well give rise to a multiplicity of further proceedings which might otherwise be avoided. Furthermore, the issues of fact and the question surrounding the interaction of the relevant sections of the Act dealt with in the decision are matters of virtually first instance and thus the decision lacks the assistance of precedence as a guide to its interpretation and implementation.

5. We might add that in the course of their argument with respect to the applicants' request, counsel for all parties, of necessity, alluded to the divergent interpretations each placed on the decision. The reasoning and conviction of these arguments influenced the Board in its deliberations with respect to the applicants' request.

6. In view of the particular circumstances of this case and with a view to avoiding additional proceedings and delay, the Board proposes to grant the request of the applicants and to clarify its decision.

7. The Board accordingly, pursuant to the provisions of section 95(1) of the Act, varies its decision of October 11, 1973 by deleting paragraph 53 and substituting therefore the following:

53. Effect must therefore be given to the findings of the Board set out above. The result is that at and from the date of this application the applicants' bargaining rights attach equally to the employees of the employers Acme and Canac as constituting one employer with the further result that at the date of the application the employees of Acme and Canac were engaged in or were entitled to engaged in a lawful strike.

DECISION OF BOARD MEMBER J.E.C. ROBINSON, Q.C.: March 7, 1974.

I dissent.

This application was initially made under the provisions of section 55 of The Labour Relations Act with respect to the bargaining rights of the applicant unions as the result of a purported sale of part of the business by Canadian Acme Screw & Gear Limited (hereinafter referred to as Acme) to Canac Shock Absorbers Limited (hereinafter referred to as Canac). In the alternative, the applicant unions claimed that Acme and Canac fell within the provisions of section 1(4) of The Labour Relations Act and that the Board should treat them as constituting one employer for the purposes of the Act.

The Board heard lengthy evidence over a period of several days and thorough argument was presented by all parties to the application.

Upon the conclusion of the hearings, the Board deliberated upon its decision for a considerable period of time and after careful and prolonged drafting, the Board issued its decision on October 11, 1973.

While I was not party to the majority decision, I assumed then, as I do now, that the decision of the majority reflected completely its findings on the issues in question. To assume otherwise would be to conclude that the majority was unable to express itself with precision upon the matters confronting it. I do not believe that to be the case.

That being so, I am unable to comprehend the applicants' present request for clarification of the majority decision. If the majority meant what it said in its initial decision, what the applicants are seeking is additional assistance from the Board in formulating their bargaining posture. Neither am I able to comprehend the

majority decision in granting such request and its resultant decision.

The applicant unions requested the Board "to exercise its powers under section 95(1) of the Act in order to clarify its decision". Certain correspondence containing various submissions passed between the respective parties and as a result the Board directed a hearing for February 18, 1974 upon the following terms:-

The Board has considered the representations of the applicant together with the submissions made with respect thereto by the solicitors for Acme and by the solicitors for Canac in letters dated respectively November 29, 1973 and December 5, 1973. As the result of these considerations the Board directs the Registrar to list the matter for hearing to enable the applicants to show cause why the Board should entertain the applicants' request for clarification of the Board's decision and to hear the submissions of all parties upon that point. (emphasis added)

The applicants make its request for "clarification" under the provisions of section 95(1) of The Labour Relations Act.

Section 95(1) states:-

The Board has exclusive jurisdiction to exercise the powers conferred upon it by or under this Act and to determine all questions of fact or law that arise in any matter before it, and the action or decision of the Board thereon is final and conclusive for all purposes, but nevertheless the Board may at any time, if it considers it advisable to do so, reconsider any decision, order, direction, declaration or ruling made by it and vary or revoke any such decision, order, direction, declaration or ruling.

The Board convened on February 18, 1974 to enable the applicants to show cause why the Board should entertain the applicants' request for clarification. Argument and submissions were heard from all parties upon that point.

It should be noted that the terms of reference for such hearing were only that the parties were to address themselves to whether or not the Board should entertain the applicants' request for clarification.

In paragraph 2 of its decision, the majority gives as one of its reasons for directing the hearing to afford the applicants the opportunity to show cause why the Board should entertain the request for clarification as follows:-

One of the reasons for requiring the applicants to show cause is the concern of the Board for the serious consequences that might affect all of its decisions if it were to appear to accept the proposition that it is automatically required to settle disputes arising out of its decisions. The Board shares the apprehension expressed by counsel for the intervener that such a practice, if allowed to develop, could lead to interminable proceedings and a lack of finality in all its decisions.

I, too, share that apprehension, and quare whether the resulting decision of the majority opens the flood-gates for similar requests by disgruntled parties who are dissatisfied with the decision of the Board in a particular case.

The practice of the Board with respect to the exercise of its powers under section 95(1) of the Act has been set out by the majority in its decision as follows:-

In the past, the Board has consistently refused to exercise its powers under section 95(1) unless the party requesting review intends to adduce new evidence which could not have been previously obtained by reasonable diligence and which would, if heard, be virtually conclusive of the issues involved or unless the decision contains an error. Neither will the Board reconsider a decision where a party wishes to raise arguments which it might have raised before the Board at the hearing.

I am also in agreement with the majority that there was no suggestion of new evidence or argument not available at the initial hearings which was supportive of the present request.

It would appear, therefore, that the majority, in its decision, not only departed from its direction for the hearing of February 18, 1974, but also departed radically from its previous practice with respect to requests for reconsideration.

With great respect, however, I do not think that this ends the matter.

In my opinion, under the provisions of section 95(1), the Board is only given jurisdiction, upon a reconsideration, to "vary" or "revoke" its decision. Nowhere does its jurisdiction extend to a "clarification" of its decision, and this is clearly what the majority is imposing upon the parties.

In paragraph 6 of its decision, the majority states:-

In view of the particular circumstances of this case and with a view to avoiding additional proceedings and delay, the Board proposes to grant the request of the applicants and to clarify its decision.

It is abundantly clear, therefore, that notwithstanding the use of the word "varies" in the concluding paragraph of the majority decision, to correspond with the wording of section 95(1), the majority is dealing only with a clarification of its decision, and in my respectful opinion, such jurisdiction does not enure from the provisions of the section.

It remains to be said, however, that if the majority is seeking to "vary" its decision within the provisions of section 95(1), no argument was sought in the direction of the Board for the hearing, nor argument presented by the parties as to why the Board should "vary" viz., change, its decision. For the Board therefore to vary its decision, without the benefit of argument thereon, would respectfully seem to me to be a denial of natural justice.

In conclusion therefore, I must reiterate that I am of the opinion that section 95(1) does not afford the Board the right to clarify its decision, and that to vary its decision without allowing the parties to make representations on such variance is not only a denial of natural justice but a most radical departure from the practice of the Board with respect to requests for reconsideration.

As a result of the foregoing, therefore, I would have denied the applicant's request for a clarification of the Board's decision of October 11, 1973.

4930-73-U: International Woodworkers of America (Complainant) v. DECOR WOOD SPECIALTIES LIMITED (Respondent).

BEFORE: D.H. Kates, Vice-Chairman, and Board Members A. Main and J.E.C. Robinson, Q.C.

APPEARANCES AT THE HEARING: P. Cavalluzzo and T. Racco for the complainant; R.C. Filion and G. Vona for the respondent.

DECISION OF THE BOARD:

March 7, 1974.

1. This is a complaint filed under section 79 of The Labour Relations Act alleging that the respondent contrary to section 58(a)(c) and section 61 of the Act discharged the aggrieved persons for union activity.
2. The complainant as it pertains to the aggrieved Barbosa Filho is dismissed for failure to attend the field officer's meetings as scheduled.
3. The Board proposes to deal with the complaint as it applies to the aggrieved Susanna Zenteno and Rogelio Zenteno together. These facts seem to be relatively straightforward. Both were employed by the respondent at the time of the complainant's organizational campaign in October, 1973 and both offered their services in explaining to several non-English speaking employees the benefits of belonging to a trade union. In the case of Susanna Zenteno, she testified that two employees were spoken to in their mother tongue, and, in the case of Rogelio, he testified to speaking to five employees. Both, it appears, incurred the disenchantment of the respondent through their activities on behalf of the trade union. The testimony of Gaetona Vona, the President of the respondent corporation amounted to an admission that when Rogelio Zenteno was found discussing the trade union in the washroom with other employees, the decision was made to fire both Rogelio and his wife. The excuse conferred for the firing, when pressed by the aggrieved, was that there was not enough work. The Board does not deem it necessary to elaborate on the evidence insofar as it relates to the credibility of Mr. Vona except to point out that he testified (in context with the grievance of Mr. Racco) that at the material time of the discharges one hundred dining room sets were in the process of production. In short, the Board is satisfied that the discharges were because of the Zentenos' union activities rather than for reasons of a lack of work.
4. Insofar as counsel's representations with respect to compensation in the matter of the Zentenos, this Board agrees that compensation should be assessed in context of the respondent's offer to rehire. Rogelio Zenteno testified that approximately two weeks after the date of discharge both he and Susanna were invited back to work. The offer was refused in that they were content with their new employment. This, of course, is substantiated by counsel's preliminary statement to the Board indicating the Zentenos were only seeking compensation for lost work and not reinstatement. This Board therefore directs the respondent to compensate Susanna and Rogelio Zenteno for loss of earnings from the date of discharge to the date of the refusal of the respondent's offer to rehire.
5. With regard to the grievance of Mr. Tony Racco, the Board heard evidence to the effect that Mr. Racco, while an employee of

the respondent in 1972, his job performance was more than adequate. In fact when Mr. Racco left the respondent's employ and it was later learned that his services were available, Mr. Gaetona Vona invited him back to work. Mr. Racco, upon being approached by a union organizer, took an active part in the complainant's organizational campaign in October. He testified that he had one heated discussion with Mr. Gaetona Vona where the latter expressed in the most vivid terms his feelings towards the trade union. Mr. Vona, it was said, knew of Mr. Racco's membership in the union and asked him to quit and cease to co-operate further in the union's affairs. Mr. Vona, in his testimony, denied knowledge of the campaign until receipt of the Board's notice of the complainant's application for certification on November 9, 1973. Mr. Racco was discharged on November 7th. This Board has examined the testimony of all other witnesses in this complaint and holds that Mr. Vona would have to have been totally oblivious of the efforts of some of his employees to organize other employees on behalf of the complainant and the attempts of his executive staff (including his brother, Santeno) to frustrate those efforts. Furthermore, the alleged excuse conferred for the discharge of Mr. Racco was his poor work performance. This Board is satisfied that Mr. Racco's performance as a spray painter began to deteriorate in the middle of October while the complainant was engaged in its organizational campaign. The Board is also satisfied that Mr. Vona on several occasions warned the aggrieved with respect to his work deficiencies. This was not denied by Mr. Racco in his evidence in chief. However, what the Board finds inconsistent with respect to the respondent's real reason for Mr. Racco's discharge is Mr. Vona's recommendation of places where the aggrieved could go, once discharged, to seek employment at his trade. Surely if Mr. Racco's work performance was so shoddy as to justify discharge, an employer does not in the same breath as the discharge put his reputation on the line by sending him to another employer. Rather, this Board prefers the testimony of Mr. Racco where he stated that one of the particular employers suggested by the respondent was a union shop and that, in Mr. Vona's view, would make the aggrieved happy. In short, the Board finds that the respondent knew of Mr. Racco's union activity and that knowledge was the basis of the discharge.

6. The Board is concerned with the delay exhibited by the complainant in launching Mr. Racco's complaint. (It is unnecessary to discuss the delay with respect to the Zentenos' grievances in light of the Board's ruling in paragraph 4 herein). The aggrieved was discharged on November 7, 1973, and the complaint was not filed until December 19th. No excuse was offered by counsel when given the opportunity to explain the reason for the delay. The Board in examining the circumstances giving rise to the complaints cannot appreciate the necessity or the justification for the inordinate length of time it took to bring this case to the attention of the Board. In such circumstances where delay can be attributed to one party to a Board

proceeding, it seems obvious to us that the other party should not be prejudiced. The Board does not pretend to set a fixed guideline with respect to what is a reasonable time for an aggrieved to initiate proceedings after an alleged violation of the Act. For example, it is the Board's opinion that a complaint should not be launched frivolously and without consideration of a reasonable chance for success. Of course, this assurance can only be obtained by examining the evidence, by interviewing witnesses, and by generally grasping a feeling for the case to be met. This may take some time!

7. However, in the Board's view, in the circumstances of the present case, five weeks from the date of discharge was not justified. We are therefore of the opinion that the respondent should not be prejudiced by the delay. The Board holds that in the circumstances of Mr. Racco's complaint two weeks from the date of discharge should have been sufficient time to file a complaint. The Board therefore directs the reinstatement of Mr. Racco to his employ with the respondent and further directs that he be compensated for loss of earnings from the date of discharge to the date of reinstatement. In calculating the amount of compensation the parties shall not include the amount of earnings lost by Mr. Racco between November 14, 1973 and December 19, 1973. The parties shall meet with a view to determining the amount of compensation as aforesaid, and, failing agreement, the Board shall remain seized of the matter.

2865-72-R: KITCHENER-WATERLOO CONSTRUCTION ASSOCIATION (Applicant) v. Labourers' International Union of North America, Local 1081 (Respondent) v. Electrical Power Systems Construction Association (Intervener).

BEFORE: D.E. Franks, Vice-Chairman, and Board Members E. Boyer and H.J.F. Ade.

APPEARANCES AT THE HEARING: R.A. Werry, B.W. Binning, J. Dolan and J. Watson for the applicant; Raymond Koskie and L. Schertzberg for the respondent; H.A. Beresford and C.A. Pickel for the intervener and Hydro Electric Power Commission of Ontario; D. Horst for Employer No. 59 - Grand Valley Construction Maintenance of Kitchener Ltd.

DECISION OF THE BOARD: March 11, 1974.

. . .

2. The applicant in the present case is a Corporation. In support of its application the applicant filed a copy of Letters Patent dated April 23, 1925, given by the Provincial Secretary of the Province of Ontario. These Letters Patent create Kitchener-Waterloo Builders Exchange a Corporation without share capital. By Supplementary Letters Patent dated December 21, 1966, given by the Provincial Secretary and Minister of Citizenship of the Province of

Ontario, the name of the Corporation was changed to Kitchener-Waterloo Construction Association. The applicant also filed a copy of the By-laws of the Kitchener-Waterloo Construction Association. On the basis of the materials filed with the Board we are satisfied that the applicant employers' organization is an employers' organization within the meaning of section 106(d) of The Labour Relations Act and that it is a properly constituted organization for the purposes of section 115(3) of the Act.

3. At the hearing the issue was raised as to whether or not the applicant is capable of fulfilling the duties of an accredited employers' organization throughout the entire geographic area it is applying to be accredited for. Although section 3(h) of the by-laws provides (in part) that:

The Associations' Directors may cause the Association to apply for Accreditation under The Labour Relations Act as the bargaining agent for a unit of employers for the purposes of regulating the relations between employers and employees in the construction industry and to represent such employers in collective bargaining within the sector of the construction industry in the Counties of Norfolk, Brant, Waterloo, Wellington, Dufferin and Grey.

The Association's Letters Patent set out its purposes and objects as being:

To establish a society which will enable the members thereof to carry on their affairs in accordance with commercial usages: to encourage and protect the building industry in the said City of Kitchener and the said Town of Waterloo and generally to encourage a spirit of co-operation amongst the members in dealing with their various problems: to adjust labour difficulties: to co-operate with the municipal authorities in dealing with building by-laws and ordinances: and to establish and follow a code of conduct which will establish for them a reputation with the public for skill, fair dealing and business probity.

The issue, then, is whether the reference in the Letters Patent to the municipalities of Kitchener and Waterloo renders section 3(h) of the by-

laws ultra vires and limits the allowable geographic area of operation of the applicant to what are today the Cities of Kitchener and Waterloo. The fact that the Letters Patent refer specifically to Kitchener and Waterloo only with respect to encouraging and protecting the building industry, and including that of adjusting labour difficulties, may be sufficient to deal with this point. In addition, however, it is now settled law in Ontario that a Corporation's activities are not limited solely to the purposes and objects set out in its Letters Patent. This arises from section 304 of The Corporations Act R.S.O. 1970 Chapter 89, which states:

A corporation unless otherwise expressly provided in the Act or instrument creating it, has and shall be deemed to have had from its creation the capacity of a natural person and may exercise its powers beyond the boundaries of Ontario to the extent to which the laws in force where the powers are sought to be exercised permit, and may accept extra-provincial rights and powers.

The Ontario Court of Appeal in Walton v Bank of Nova Scotia (1964) 43 D.L.R. (2d) 611 held that the effect of this section is to allow a corporation to carry on activities not specifically provided for in its Letters Patent. Further, it held that any restrictions on this general power must be stated in positive terms and cannot be merely implied from the language used. As Schroeder J.A. stated at p. 620:

The definition of "express" contained in Murray's English Dictionary when the word is applied to a law, stipulation or grant, etc., is that it is used in the sense of "expressed and not merely implied; definitely formulated; definite, explicit." In my opinion the word "expressly" is used in section 287 (now section 304) in this sense - meaning that a provision of the Act or instrument creating the corporation does not have the effect sought to be attributed to it unless it is stated in express and positive terms, directly, and not merely be implication from language used.

In that the Letters Patent of the applicant do not expressly limit its activities to what are today the Cities of Kitchener and Waterloo, the Board hereby finds that the applicant is capable of fulfilling the duties of an accredited employers' organization throughout the

entire geographic area it is applying to be accredited for.

. . .

4046-73-R: Canadian Union of Industrial Employees (Applicant) v. THE GOLD CREST PRODUCTS LIMITED (Respondent) v. International Woodworkers of America (Intervener).

BEFORE: Rory F. Egan, Vice-Chairman, and Board Members A. Main and F. W. Murray.

APPEARANCES AT THE HEARING: J. B. Waterman and N. Rudisi for the applicant; James B. Noonan, Louise D. Binder, K. H. Gross and J. M. King for the respondent; Jeffrey Sack, Paul Cavalluzzo and Jack Horan for the intervener.

DECISION OF THE BOARD: March 12, 1974.

1. At the continuation of hearing on January 23, 1974 in this matter, the Board heard evidence with respect to certain charges brought by the intervener.
2. The Board finds that the evidence does not support the intervener's charge with respect to management's assistance to Nicholas Rudisi, chief organizer of the applicant, and the charge is accordingly dismissed.
3. The intervener adduced evidence in support of its allegation that Lawrence Backs, an employee of the respondent, was threatened by organizers of the applicant that he would lose his job if he did not join the applicant union. The making of the threat was attributed to one of the applicant's organizers named Bruno. Bruno denied making these statements.
4. Backs stated that he was in the lunch room in the company of other employees when Reda, one of the other organizers, entered the room and commenced to pass out application for membership cards and collect dollar payments. Backs said that he accepted a card and was going to take it home to consider whether or not he would join the applicant when Bruno stated to the employees at large that anybody who did not join wouldn't be there six months later and that they would be the first to go. Backs stated that as a result of this statement by Bruno he signed his application card and paid a dollar membership fee.
5. It is the intervener's position, as we understand it, that the statement made to Backs amounted to intimidation and coercion. While Bruno was an organizer for the applicant, he obviously had no

authority over Backs or any of the other employees present and obviously has no way of carrying out the consequences that he said would follow the failure to sign for the applicant. It is quite apparent that the statement could readily be checked and that no reasonable employee would be intimidated by a statement of this nature. The Board therefore finds that the statement attributed to Bruno does not affect the validity of any of the membership evidence filed by the applicant.

6. During the course of the testimony concerning the allegation of intimidation, a question arose as to whom Backs had paid the dollar when he signed the application card. There is no doubt whatever that he did pay a dollar at the time that he signed the card. The question is whether he paid the dollar to Bruno or to Reda who signed the receipt as collector. There is a contradiction in the evidence of Bruno, Reda and Backs on the point as to precisely who received the dollar. It is quite apparent, however, that Reda and Bruno were present in the lunch room at the same time as the dollar was paid and the whole transaction took place within the confines of the lunch room and while the dispute may give rise to some question as to credibility, the determination of the precise person to whom the dollar was handed is, in the circumstances, not vital in so far as the validity of that or other cards filed by the applicant is concerned.

7. The Board finds that all employees of the respondent at Metropolitan Toronto, save and except foremen, foreladies, persons above the rank of foreman and forelady, office and sales staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period, constitute a unit of employees of the respondent appropriate for collective bargaining.

8. The Board is satisfied on the basis of all the evidence before it that not less than thirty-five per cent of the employees of the respondent in the bargaining unit, at the time the application was made, were members of the applicant on July 12, 1973, the terminal date fixed for this application and the date which the Board determines, under section 92(2)(j) of The Labour Relations Act, to be the time for the purpose of ascertaining membership under section 7(1) of the said Act.

9. A representation vote will be taken of the employees of the respondent in the bargaining unit. All employees of the respondent in the bargaining unit on the date hereof who do not voluntarily terminate their employment or who are not discharged for cause between the date hereof and the date the vote is taken will be eligible to vote.

10. Voters will be given a choice between the applicant and the intervener.

11. The matter is referred to the Registrar.

5139-73-R: Robert L. Robbins (Applicant) v. United Steelworkers of America (Respondent) v. CANADIAN PHOENIX STEEL PRODUCTS LTD. (Intervener).

BEFORE: D.H. Kates, Vice-Chairman, and Board Members H.J.F. Ade and P.J. O'Keeffe.

APPEARANCES AT THE HEARING: Robert L. Robbins and John Norrie for the applicant; Paul Cavalluzzo and Dave Martin for the respondent; D.L. Brisbin and I.S. MacDonald for the intervener.

DECISION OF THE BOARD: March 13, 1974.

1. The name "Robert L. Robbins, 3154 Bonaventure Drive, Mississauga, Ontario, on behalf of all employees" appearing in the style of cause of this application as the name of the applicant is amended to read: "Robert L. Robbins".
2. This is an application under section 49(2) of The Labour Relations Act for a declaration terminating the bargaining rights of the respondent trade union.
3. At the outset of the hearing in this matter counsel for the respondent submitted that the application was untimely. The parties are in basic agreement on the facts relevant to this issue and they may be summarized as follows. In July 1973, the intervener company purchased the business of Canadian Phoenix Steel & Pipe (Toronto) Ltd.. At the time of the sale the predecessor company and the respondent were parties to a collective agreement whose recognition clause covered the employees initiating these proceedings. The duration clause of the said agreement reads as follows:

ARTICLE 26 - DURATION AND EFFECTIVE DATE

26.01 This collective agreement shall be effective from January 1, 1973 to and including December 31, 1973 unless written notices of intent to terminate and/or amend the agreement at the expiration of the above period is given by either party to the other party during the period beginning November 1st and ending November 30th, 1973.

26.02 Within thirty (30) days after receipt of any notice given pursuant to this Article by either party, the parties to this agreement shall commence negotiations. During the period of

negotiations, this agreement shall remain in full force and effect.

4. On November 12, 1973, the respondent in accordance with the agreement gave the intervener company written notice of desire to bargain with a view to making a new collective agreement. The company refused to bargain. On December 3, 1973, the respondent applied to the Minister requesting the appointment of a conciliation officer under section 15 of the Act. On January 18, 1974, the Minister referred to the Board under section 96 the question as to whether the Minister had authority to appoint a conciliation officer. The hearing with respect to this matter was set for February 14, 1974. The day before the hearing, however, the intervener admitted to the respondent that a sale had transpired between it and the predecessor company. As a result of his admission, the intervener thereby became bound by the terms of the collective agreement referred to in paragraph 2 herein. The hearing scheduled with respect to the reference proceedings was therefore cancelled. On February 20, 1974, the respondent reapplied to the Minister for the appointment of a conciliation officer. At no time relevant to this application was a conciliation officer appointed pursuant to section 15 of the Act.

5. The issue as to whether an application is timely in these circumstances is governed by sections 49(2)(a) and 53(2) of the Act. In short, if an application for termination is made after the commencement of the last two months of the operation of a subsisting collective agreement or before the Minister has appointed a conciliation officer (whichever is later), the Board would be obliged to entertain the application.

6. The argument put by counsel involves an interpretation of the duration clause of the collective agreement. It is submitted that because Article 26.02 provides for the continuance in full force and effect of the expired collective agreement "during the period of negotiations", the applicant is thereby barred from initiating these proceedings. In short, the continued operation of the terms of the collective agreement during the negotiating period is an effective bar to any challenge to the respondent's representative capacity. It is also submitted that the Board should accede to this argument in light of the protracted delay in negotiations caused by the refusal of the intervener to bargain when notice was initially given in November 1973.

7. Counsel for the intervener argues that notwithstanding the extension of the operation of the collective agreement under Article 26.02 any such extension must be read subject to the limitations prescribed by the Legislation. In this regard section 44(2) is referred to in support of the proposition that any agreement providing for the continued operation of the provisions of a collective

agreement "does not bar an application for certification or for a declaration that the trade union no longer represents the employees in the bargaining unit".

8. Before proceeding with the merits of these submissions the Board proposes to make the following findings of fact. The Board finds that because of the admitted sale of a business the intervenor became bound by the subsisting collective agreement between the predecessor and the respondent at the time of the sale; (see section 55(2)). Furthermore, the written notice given the intervenor company on November 12, 1973, of a desire to bargain for a new agreement was in compliance with Article 26.01 of that agreement. Subsequent to that notice no new agreement was entered into nor was a conciliation officer appointed with a view to conferring with the parties to endeavour to effect a collective agreement. The instant application was filed by registered mail on February 1, 1974.

9. In light of the above the Board holds that the instant application is timely and falls squarely within the time limits provided under section 49(2)(a) of the Act. The expiry date of the collective agreement was December 31, 1973. The application was filed on February 1, 1974 and at no time subsequent to the expiry date was a conciliation officer appointed. Furthermore, the Board agrees with the submissions of counsel for the intervenor. An extension of the operation of a collective agreement during the negotiating period must be subject to an otherwise timely application for termination. The concluding words of section 44(2) indicates a consistent intention by the Legislature to preserve the "open period" for purposes of permitting employees represented by an incumbent trade union to express their views with respect to continued representation by a trade union.

10. In order for the Board to accede to the respondent's argument it would have to ignore the provisions of section 44(5) of the Act. That provision prohibits parties to an agreement to revise by mutual consent the term of operation of a collective agreement. In order for a term of an agreement to be extended a duly filed application under section 44(3) of the Act would have to be made. In the course of such an application notice is extended to employees wherein they are given the opportunity to express their opinion with respect to the merits of the joint request to extend the term of an agreement. Foremost in permitting employees the opportunity to participate in the proceedings is the Board's concern that they not be prejudiced with respect to an alteration of the "open period". To impose a bar in the circumstances recited would be to accord to the respondent a privilege not intended by the Legislation.

11. The Board is further satisfied on the basis of all the evidence before it that not less than fifty per cent of the employees of Canadian Phoenix Steel Products Ltd. in the bargaining unit, at the time the

application was made, had voluntarily signified in writing that they no longer wish to be represented by the respondent union on February 14, 1974, the terminal date fixed for this application and the date which the Board determines, under section 92(2)(j) of The Labour Relations Act, to be the time for the purpose of ascertaining the number of persons who have voluntarily signified in writing that they no longer wish to be represented by the respondent union under section 49(3) of the said Act.

12. The Board directs that a representation vote be taken of the employees of Canadian Phoenix Steel Products Ltd.. Those eligible to vote are all employees of Canadian Phoenix Steel Products Ltd. at its plant located within a twenty-five mile radius line drawn on the M.T.P.B. February, 1972 Figure 2 Map signed for identification by W. Grisdale and W. Longridge for the Company and Union, respectively, save and except: office and clerical staff, draughtsmen and engineering personnel, laboratory technicians, non-destructive testing technicians, plant guards, office janitors and supervisors with authority to hire or fire on the date hereof who do not voluntarily terminate their employment or who are not discharged for cause between the date hereof and the date the vote is taken.

13. Voters will be asked to indicate whether or not they wish to be represented by the respondent in their employment relations with Canadian Phoenix Steel Products Ltd.

14. The matter is referred to the Registrar.

4630-73-R: Canadian Union of Public Employees (Applicant) v. THE WELLINGTON COUNTY BOARD OF EDUCATION (Respondent).

BEFORE: Rory F. Egan, Vice-Chairman, and Board Members J. D. Bell and O. Hodges.

DECISION OF THE BOARD: March 14, 1974.

1. The Board finds that the applicant is a trade union within the meaning of section 1(1)(n) of The Labour Relations Act.

2. This is an application for certification in which the applicant proposes the following bargaining unit:

All employees of the respondent in the County of Wellington County, engaged in its measurement and Evaluation Servicing Counselling and Attendance Services and Psychological Services, save and except office and clerical staff and employees covered by subsisting collective agreement CUPE Local #256.

3. The respondent submitted that the unit proposed by the applicant comprised managerial persons and in any event was inappropriate since it would exclude similar groups of employees and thus fragmentize the bargaining unit.
4. The Board appointed an Examiner to inquire into the composition of the bargaining unit and the duties and responsibilities of the persons occupying the classifications set out in the bargaining unit proposed by the applicant.
5. At a meeting held with the Examiner on December 3, 1973, the parties agreed that the normal appropriate bargaining unit would be "all technical, clerical and office employees". They further agreed to appear before the Board to make submissions on the question as to the appropriateness of the bargaining unit.
6. The applicant argued that there had been established a history of collective bargaining with the group contained in the applicant's proposed bargaining unit and that in view of that history the Board should deem the proposed unit appropriate in the circumstances. It rested its case solely upon this point.
7. In support of its argument, the applicant referred to a document issued by the respondent in December 1972. The respondent agrees that this document together with two other similar documents dealing with two other different groups of employees were issued by it. The documents referred to are directed to three groups of employees described as follows:
 - Attendance, Measurement & Evaluation,
Psychology and Director's Administrative Assistant
 - Counselling & Attendance, Measurement & Evaluation
Psychological Services and Director's Administrative
Assistant.
 - Director and Superintendents Including Finance
and Property
8. The document having reference to the classifications contained in the bargaining unit proposed by the applicant has paragraphs devoted to statutory holidays, vacations, health and insurance benefits, long-term disability plan, pension, sick leave, retirement gratuity, workmen's compensation, and mileage allowance. The document is unsigned and contains no termination date. It was argued by the applicant that these documents were issued in response to proposals made by employees and that they therefore represented the outcome of collective bargaining.

9. It is incumbent upon the applicant to establish that there is in fact a history of collective bargaining of such significance as to persuade the Board to depart from the norm. The type of persuasive evidence required is clearly illustrated in the Board of Education for the City of Toronto Case, OLRB Rep. July 1970 p. 430.

10. In the present case, there is no evidence establishing a history of bargaining even if it were to be assumed that the document relied upon by the applicant evidenced collective bargaining which, of course, it does not. The application is accordingly dismissed.

5044-73-U: Canadian Textile & Chemical Union (Complainant) v. DOROTHEA KNITTING MILLS LIMITED (Respondent).

BEFORE: Frank V. Boscariol, Vice-Chairman, and Board Members F. W. Murray and P. J. O'Keeffe.

APPEARANCES AT THE HEARING: F. W. Park, R. K. Rowley and Laurel Ritchie for the complainant; D. L. Brisbin and B. Borsook for the respondent.

DECISION OF THE BOARD: March 14, 1974.

1. This is a complaint filed under the provisions of section 79 of The Labour Relations Act wherein the complainant alleges that the aggrieved person, Miss Randi Reynolds, has been dealt with by the respondent contrary to the provisions of section 58 of the said Act.

2. The evidence discloses that Miss Reynolds was hired by the respondent in April of 1973 and up to the time of her indefinite layoff on January 15, 1974, she was employed as a "Fine Gauge Topper" at the respondent's mill. The only other employee occupying this classification is Miss Elizabeth Szabo, whose length of service with the respondent exceeded by one year to that possessed by Miss Reynolds. The respondent also employed two other employees in the classification of "Coarse Gauge Topper". While these employees could also perform fine gauge topping work, it would appear that the "Fine Gauge Toppers" could not efficiently function in the coarse gauge area of the respondent's operations. With regard to Miss Reynold's capabilities, it is clear that she had no previous training in the textile industry prior to the time of her employment with the respondent and that the training that was given to her subsequently, was generally restricted to the fine gauge area of the respondent's operations.

3. The evidence, further, discloses that Miss Reynolds was active in the complainant union's organizational campaign and that on November 21, 1973, she had openly demonstrated her support for

the union by distributing leaflets advocating a union to the employees in the vicinity of the respondent's premises. She was also present at a hearing on December 31, 1973, before the division of the Board seized with the complainant union's application for certification (Board File No. 4880-73-R). With respect to these latter proceedings, it would appear that this application was filed on December 5, 1973, and by a decision of that Board, dated January 2, 1974, a representation vote was ordered. On January 11, 1974, the representatives of the complainant union together with two employees of the respondent, met with the respondent's representatives in one of the Ministry of Labour's meetings rooms at which time the complainant union officially notified the respondent that Miss Reynolds was to be the union scrutineer in the vote to be conducted on January 24, 1974. There is no evidence before us that the two aforementioned employees were penalized in any way by the respondent as the result of their participation in this meeting. It is the complainant's submission, however, that Miss Reynold's subsequent discharge was motivated by her activities on the complainant's behalf.

4. The evidence of Mr. Albert Hooker, the plant superintendent, is to the effect that the respondent's operations are relatively seasonal and that full production normally only occurs from the month of April up to the end of October or early November. On November 27, 1973, Mr. Hooker stated that he had interviewed Miss Szabo and Miss Reynolds concerning the shortage of fine gauge work. He further stated that he would have laid off Miss Reynolds at about this time, but, in view of an anticipated increase in the work load in January, due to an optimistic forecast in the increase of sales, he had decided to keep her at work. To achieve this end, both Miss Reynolds and Miss Szabo were retained on a "short work week" basis (e.g. a four-day week). During the course of giving his testimony, Mr. Hooker candidly admitted his opposition to the union. It is noteworthy that he nevertheless continued to retain Miss Reynold's services despite the fact that he was immediately informed of her union activities on November 21, 1973, upon his return from vacation.

5. Mr. Hooker further testified that his optimism concerning an increase in sales for January, were dispelled after the Montreal showings which were conducted earlier in that month. Accordingly, Mr. Hooker stated that upon consulting with Miss Reynolds' immediate foreman, and upon being satisfied that he could not place her in other areas of the mill, he made the decision on January 15, 1974 to layoff Miss Reynolds for an indefinite period which, at the time, he estimated would be for a period ranging from two to thirteen weeks. He specifically denied that his knowledge of her recent appointment as scrutineer, or for that matter - any of her union activities, had anything to do with this decision. As of the date of the filing of this complaint, it would appear that Miss Szabo continued to work in the fine gauge area, but that approximately ten per cent of her work is being performed by the two "Coarse Gauge Toppers".

6. We are not asked in these proceedings to determine whether the respondent is in violation of the provisions of section 70(2) of The Labour Relations Act, nor whether, in these particular circumstances, the true wishes of the employees would not reasonably be reflected in the vote which was conducted as a result of the other proceedings now pending before the Board. (See paragraph three herein). The latter situation is the concern of the division of the Board seized with that matter and it would appear that objections to that vote have been filed. The question before us, however, is to determine whether the complainant has, on the balance of probabilities, established that Miss Reynolds has been discriminated against by the respondent as the result of her union activities. Nevertheless, we do find, in the circumstances of this case, that an onus of credible explanation is cast upon the respondent to show that its dealings with Miss Reynolds were not, in fact occasioned by any anti-union animus on its part.

7. Having carefully reviewed the totality of the evidence, we are satisfied that Miss Reynolds, as the junior employee in her classification, was laid off by the respondent on January 15, 1974 during a normally-slack period in the respondent's operations, when it became clear that anticipated sales would not, in fact, materialize. In this regard, we note that this action, in the absence of any peculiar skills possessed by the employee, conforms with the respondent's general policy of utilizing "classification seniority" as opposed to "plant-wide seniority" for layoff purposes. In this connection, we further note the respondent's undertaking given at the hearing that Miss Reynolds will be recalled when a fourth person is required for the topping operations or if she should be found suitable for retraining in another area of its operations.

8. In the result, this complaint is dismissed.

5196-73-M: McMASTER UNIVERSITY (Employer) v. Mr. Kenneth Brearley (Employee) v. McMaster Guards Association (Trade Union).

BEFORE: Rory F. Egan, Vice-Chairman, and Board Members F. W. Murray and P. J. O'Keefe.

APPEARANCES AT THE HEARING: T. W. Sargeant and F. C. Hopkinson for the employer; Kenneth Brearley for the employee; John F. Buckle for the trade union.

DECISION OF THE BOARD: March 14, 1974.

1. The Minister has referred to the Ontario Labour Relations Board, pursuant to section 96 of the Act, the question as to whether he has the jurisdiction to appoint an employer nominee to an arbitration board.

2. The trade union is the bargaining agent for all security officers employed by the employer with exceptions not here relevant. The trade union and the employer are parties to a collective agreement which was in effect at all material times.
3. On or about October 24, 1973, the employer discharged Kenneth Brearley, the employee who had been employed as a security officer and was thus a member of the bargaining unit represented by the trade union at the time of his discharge.
4. The employee launched a grievance protesting against the discharge. The grievance was carried through the grievance procedure set out in the collective agreement and was finally denied by the personnel committee of the employer.
5. The employee then notified the employer's personnel office on December 3, 1973 that he required the grievance to be submitted to arbitration under Article 6 of the collective agreement. He also named his arbitrator for the board of arbitration.
6. The employer in a letter dated December 12, 1973 advised the employee that his request did not constitute proper notice as contemplated by Article 6 since that article provided for written notice of appeal by the trade union.
7. The issue between the employer and the employee, therefore, centres on the question as to whether the employee may carry his grievance up to and through arbitration or whether recourse to arbitration is available only upon the application of the trade union or the employer.
8. The relevant portions of the collective agreement are as set out below:

ARTICLE 5 Grievance Procedure

5.01 Nothing herein shall prevent an individual employee from discussing a personal complaint with his immediate supervisor or from presenting a grievance on his own behalf as herein provided.

5.02 Should any grievance arise between any employee and the Employer as to the interpretation, application, administration or alleged violation of this Agreement or as to working conditions, the employee shall discuss such complaint with his immediate supervisor and an earnest effort will be made to settle such grievance without undue delay. Failing settlement of such complaint by discussion, it will be dealt with in the following manner:

5.03 Stage One An aggrieved employee shall first submit his representations in writing to his immediate supervisor either directly or through his committeeman. Any such grievance shall be presented within 72 hours of the time when it arose. Such representations shall state the nature of the grievance, the remedy sought and any provisions of the Agreement upon which the grievance is based.

5.04 Stage Two If within 72 hours from the time such representations were presented a written decision satisfactory to the employee is not given, then such employee, accompanied by a committeeman, may within 72 hours after the decision of the supervisor has been given or should have been given, present such written representations to the Chief Security Officer or other person designated by the Employer.

5.05 Stage Three If within 72 hours from the time representations at Stage Two were presented, a decision in writing satisfactory to such employee is not given, then such employee may within 48 hours after the written decision of the Chief Security Officer (or other designate) has been given or should have been given present such written representations to the Director of Personnel Services or other representative designated by the Employer from time to time. Such officer or other designate shall notify the employee of the time and place at which they will meet to discuss the matter and at such meeting the written representations and the decision of the Chief Security Officer (or other designate) at State Two shall be considered. The grievor may be accompanied by a committeeman and/or an advisor. Every effort will be made to settle such grievance within 10 days from the date upon which such officer received written notice of the matter. Such officer shall give the decision in writing on behalf of the Employer.

ARTICLE 6 Arbitration

6.01 If any grievance relating to the interpretation, application, administration or alleged violation of this Agreement, including whether the matter is arbitrable or not, shall not have been satisfactorily settled pursuant to the

provisions of Article 5, the matter may then by written notice of appeal given to the other party within 5 working days of the delivery of the decision of the Employer at Stage Three, or in the case of a difference directly between the Association and the Employer, within 5 days from the date when the written reply to the submission was or should have been delivered be referred to arbitration. The Employer and the Association shall each appoint one arbitrator within 7 days from the receipt of the notice and the two arbitrators so appointed shall appoint a third who shall be the chairman. No person may be appointed as an arbitrator who has participated directly in any attempt to settle the grievance. If the parties fail to agree upon a chairman within 5 days, either party may request the Ontario Labour Management Arbitration Commission to choose the chairman. A chairman shall be chosen, having regard to his impartiality, his qualifications in the interpretation of agreements and his familiarity with industrial relations. The decision of the majority of the arbitrators, or in the event there is no majority decision, the decision of the chairman shall be final and binding upon all parties concerned and any employee affected by it, but in no event shall the arbitrators be authorized to alter, modify or amend any part of this Agreement.

6.02 Notwithstanding the provisions of Section 6.01, the parties hereto may select one person as a referee to whom any such grievance may be submitted for arbitration and such person shall have the same powers and be subject to the same restrictions as a board of arbitrators appointed under this Agreement.

6.03 The rules of arbitration annexed hereto as Schedule "A" shall govern the conduct of any arbitration proceedings hereunder. In any arbitration hereunder, the presumption shall be, until the contrary shall have been proven, that the provisions of this Agreement have been complied with.

ARTICLE 7 Discharge Cases

7.01 The Association will not question the dismissal of any probationary employee nor shall such dismissal be the subject of the grievance procedure.

7.02 A claim by an employee (other than a probationary employee) that he has been unjustly discharged will be treated as a grievance if a written statement of such grievance is lodged with the Chief Security Officer within 5 days after such employee ceases to work for the Employer. The Employer agrees to provide a discharge employee with the written reason for such discharge at the employee's request. In any action thereafter, however, the Employer will not be restricted to only the reasons therein.

7.03 Such grievance may be settled under the grievance procedure, including arbitration, provided by this Agreement commencing with Stage Two, by:

- (a) confirming the Employer's action in dismissing the employee; or
- (b) reinstating the employee with full compensation for time lost; or
- (c) by any other arrangement which may be deemed just and equitable in the circumstances.

9. Schedule "A" referred to in Article 6.03 provides:-

SCHEDULE "A"

RULES OF ARBITRATION

1. Arbitration shall be heard at a place mutually agreed upon, and in default of agreement, at Hamilton, Ontario.
2. In any arbitration, the written representation of the employee made to the Director of Personnel Services, and his decision, shall both be presented to the arbitrators and the award of the arbitrators shall be confined to determining the issue therein set out.
3. Each party to an arbitration shall be entitled through counsel or otherwise to present evidence, to cross-examine the witnesses of the other party and to present oral arguments. Briefs of arguments may be presented by each party and each party shall be entitled to reply to the brief or argument by the other. If briefs are to be filed, such briefs and replies, if any, shall be filed within such times

as may be specified by the chairman. A copy of any brief or reply shall be delivered to the other party forthwith after filing.

4. Witness fees and allowances shall be paid by the party calling the witnesses.

5. The Employer and the Association shall each be responsible for one-half of the expenses of and fees payable to the chairman of the arbitrators in addition to the expenses of their own nominee.

6. The award of the arbitrators shall be given within a period of fifteen (15) days after the close of hearings.

10. The employee placed particular reliance upon the wording of Article 7 which provides that a claim that an employee has been unjustly discharged will be treated as a grievance. He submits that Article 7.03, in stating that such a grievance may be settled under the grievance procedure including arbitration, must be interpreted as giving discharged employees the right to carry a grievance through to arbitration.

11. It is obvious from a reading of Article 5 that it is open to an individual employee to launch his own grievance and to carry it through to the director of personnel or other designated person. Article 6, however, which is devoted to arbitration does not make any reference to individual employees but rather provides for notice of appeal "to the other party". More specifically, it provides that the employer and the association shall each appoint an arbitrator. The article further states that if the parties fail to agree upon an arbitrator either party may request the Ontario Labour-Management Arbitration Commission to appoint an arbitrator. There is some ambiguity in this language which raises the question as to whether the agreement on a chairman is to be between the nominees or the parties to the collective agreement. It is certain, however, that the opinion of the grieving employee is not a matter for consideration at this phase of the proceedings. It is also to be noted that the Article provides that the decision of the arbitrator is to be final and binding upon "all parties concerned and any employee affected by it". There is thus a further distinction made in the very language of the collective agreement between "parties" and "employees". In addition, the rules governing arbitration set out in Schedule "A" to the collective agreement carry on the distinction between an employee who has grieved and the parties to the collective agreement and give to the latter the carriage of arbitrations.

12. It is therefore quite clear that under the grievance and

arbitration provisions of the collective agreement the parties are the employer and the trade union and it is these parties alone who are contractually entitled to invoke the arbitration proceedings notwithstanding the right of an employee to file a grievance on his own behalf including a grievance against discharge under Article 7.

13. The employee in the course of his argument referred to the provisions of section 37(4) of The Labour Relations Act as supporting his position. He contended that all the prerequisites for an appointment by the Minister set out in that section are present in the instant case.

14. Section 37(4) provides:

Notwithstanding subsection 3, if there is failure to appoint an arbitrator or to constitute a board of arbitration under a collective agreement, the Minister, upon the request of either party, may appoint the arbitrator or make such appointments as are necessary to constitute the board of arbitration, as the case may be, and any person so appointed by the Minister shall be deemed to have been appointed in accordance with the collective agreement.

15. The section does nothing to advance the employee's argument since it refers only to the failure of either party to appoint an arbitrator. A reading of the whole of section 37 of the Act makes it unmistakably clear that the parties referred to throughout that section are the union and the employer. There is nothing to be found in the whole of section 37 which recognizes a right in or bestows a right upon an individual employee covered by a collective agreement to exercise the functions reserved to a party to the collective agreement.

16. There is consequently nothing in the collective agreement nor in The Labour Relations Act empowering the employee to require the Minister to appoint an arbitrator.

17. The answer to the Minister is therefore "No".

4940-73-U: Canadian Textile and Chemical Union (Complainant) v. ARTISTIC WOODWORK CO. LIMITED (Respondent).

BEFORE: Frank V. Boscariol, Vice-Chairman, and Board Members J. D. Bell and P. J. O'Keefe.

APPEARANCES AT THE HEARING: N. A. Endicott, M. Parent and J. Sinagaca for the complainant; W. G. Phelps and S. L. Van Zyl for the respondent.

DECISION OF THE BOARD: March 14, 1974.

1. The name "Artistic Woodwork Company Limited" appearing in the style of cause of this application as the name of the respondent is amended to read: "Artistic Woodwork Co. Limited".

2. This is a complaint filed under the general provisions of Section 79 of The Labour Relations Act wherein the complainant alleges that certain named aggrieved persons have been dealt with by the respondent contrary to the provisions of Sections 58 and 64 of the said Act. In the case of the aggrieved persons Gus Maltezas and Angelo Pomponi, the relief sought is limited to compensation for lost time as these employees have been subsequently reinstated. As regards the remaining aggrieved persons, viz. George Isla, George Kakadiaris, Giuseppe Cristiano, Pol Kozis, Anastasios Zachos, Luigi Gismondi and John Katevatis, the complainant seeks both reinstatement and compensation on their behalf.

3. The evidence as adduced at the hearing of this matter on January 31, 1974, discloses that on August 21, 1973, some employees of the respondent commenced a legal strike which continued until December 3, 1973, at which time a collective agreement was concluded between the complainant union and the respondent company. As part of the settlement of this strike negotiated at this time, these parties also executed a memorandum (Exhibit "A") regarding the right of certain named employees to return to work on December 5, 1973, pursuant to the terms of the said collective agreement. It is conceded that this document is not to be treated as part of the said collective agreement, the terms of which had been agreed to as of November 23, 1973. The union however had refused to sign the said collective agreement until the evening of December 3, 1973, and the said memorandum (Exhibit "A") was then executed between the parties shortly thereafter. The respondent however refused to take back any of the aggrieved persons at this time and accordingly the complainant union specifically reserved in another portion of this memorandum, the right to grieve any disciplinary action with respect to eight of the named aggrieved persons. John Katevatis's name does not appear on this list. In his particular case, the respondent took the position that he had quit on October 9, 1973, and it verbally undertook to consider any request for re-employment that he might make but that it did not have an opening for him at this time.

4. The evidence further discloses that on December 4, 1973, the respondent instructed the said eight aggrieved persons by telephone that they were suspended and therefore were not to return to work on December 5, 1973. With the exception of Anastasios Zachos (whose employment was terminated on the basis of his having been charged during his alleged probationary period), the remaining seven aggrieved

persons received individual letters from the respondent dated December 4, 1973, advising them, inter alia, of their suspension "pending the trial of or other final disposition" of the charges laid against them. There is no question in these proceedings that such charges relate to certain alleged activities engaged in by these individuals while on the picket line which occurred sometime during the course of the strike between August 21 and December 3, 1973. Specifically, they include charges relating to criminal code offences including obstruction, mischief, assault and wilful damage to an automobile.

5. Accordingly, individual grievances for each of the aggrieved persons were filed with the respondent on December 6, 1973, together with individual applications by the aggrieved persons requesting that they be returned to work pursuant to the provisions of Section 64 of the Act. The respondent's replies dated December 11, 1973, represent a denial, in effect, of both the individual grievances and the individual applications. By letters dated December 14, 1973, the complainant union in advising the respondent of its desire to refer the individual grievances to arbitration and submitting the name of its nominee thereto, reiterated its understanding, pursuant to the terms of Exhibit "A", "that there will be one Board of Arbitration to deal with all grievances on disciplinary action taken by the Company at this time". This understanding was confirmed by the letters from the respondent dated December 21, 1973, which contained the name of its nominee to the Board of Arbitration.

6. As regards the aggrieved persons Maltezas and Pomponi, the evidence discloses that once charges against these persons were either withdrawn or dismissed in Provincial Court, they were subsequently permitted to return to work. Convictions were registered against the aggrieved persons Kozis and Kakadiaris on January 2 and January 3, 1974, respectively. It would appear that these individuals have been subsequently discharged by the respondent. However, counsel for the respondent submits that the Board should not take cognizance of this factor on the basis that these events took place after the date of the filing of this complaint on December 20, 1973. In the particular circumstances of this case however, we reject counsel's submission in this regard. The filings with this Board also indicate that a conviction for obstruction of a peace officer was registered against Cristiano on December 13, 1973. Counsel for the complainant union indicated that an appeal by way of trial de novo in relation to Kakadiaris's conviction was contemplated, but he conceded that this was irrelevant to the proceedings now before us.

7. It is clear from the "Form 32" complaint form as filed in these proceedings on December 20, 1973, that all nine grievances had been referred to arbitration prior to this date "in separate proceedings, and under different terms of reference,...according to the terms of the Collective Agreement". It is not in dispute that the said

Board of Arbitration held an initial hearing in this regard on January 28, 1974. However, the said Board of Arbitration was not able to entertain the merits of these grievances at this time but rather was essentially pre-occupied with counsel's representations concerning preliminary objections. Counsel for the respondent stated that he had challenged the jurisdiction of the said Board of Arbitration to deal with the grievances as filed in relation to Katevatis and Zachos. He further stated that the union at this time indicated that it would not be proceeding with the Katevatis grievance. As regards the Zachos grievance, counsel for the respondent asserted that he took the position that the discharge of a probationary employee was not arbitrable and that the said Board of Arbitration had reserved its decision upon this issue.

8. By way of preliminary objection, counsel for the respondent argued that the Board should not entertain a Section 79 complaint where, as in the instant case, there is a remedy available to the complainant by way of the grievance and arbitration procedures as provided for not only in the collective agreement but also in the said memorandum (Exhibit "A").

9. In the past, the Board has held that where there is a remedy available to the parties under the terms of a collective agreement, the Board, in the exercise of its discretion, will not entertain a complaint made under the provisions of Section 79, except in "special circumstances". (In this regard, see the numerous cases referred to in the decisions of the Board in The Civil Service Association of Ontario (Inc.) Case (1972) OLRB M.R. 1016; the Gambin Brothers Limited case OLRB M.R. August 1968, p. 494 and particularly at page 499 and the Beer Precast Concrete Limited case OLRB M.R., September, 1968 p. 619). A review of the cases discloses that an example of such "special circumstances" would be where the union has entered into a collusive arrangement with the employer, or where (as in the Boivin and the Plumbers Association case OLRB M.R., October, 1966, p. 513), the union itself had procured the discharge of the grievor and it would be accordingly unreasonable to expect it to carry his case through the arbitration process.

10. In the Collingwood Shipyards, Division of Canadian Shipbuilding & Engineering Limited case OLRB M.R. July 1967. p. 376, the complainant union, an affiliate of the Confederation of National Trade Unions (e.g. the C.N.T.U.), instituted Section 65 (now Section 79) proceedings on behalf of five aggrieved persons who had been discharged by the employer following an illegal strike which was precipitated by their removal as stewards of the United Steelworkers of America, Local 6320, when it became evident that they were active C.N.T.U. supporters at a time when the complainant union was attempting to replace the Steelworkers local as bargaining agent for the employees as defined in the collective agreement entered into between

the employer and the said Steelworkers local. Nevertheless, the said Steelworkers local processed the five individual grievances as filed with it the aggrieved persons, to the stage where an arbitration board had been appointed but had not yet sat. In sustaining the employer's preliminary objection to the Ontario Labour Relations Board entertaining this complaint, the Board, commencing at page 379, stated as follows:

"13. We recognize that, in view of the allegations made by the complainant on behalf of the aggrieved persons, the United Steelworkers of America may find themselves in a most unenviable position in the arbitration proceedings. The United Steelworkers of America may be subject to the accusation that they did not lend their full support to the aggrieved persons in the arbitration proceedings unless the result is completely favourable to the grievors. Although invited to do so, this Board is not prepared to assume that the United Steelworkers of America will fail to fairly promote the interests of the aggrieved persons in the arbitration proceedings. This Board is also not prepared to assume that the arbitration board will not make its award in accordance with the principles of natural justice. The Labour Relations Board is not empowered to sit in appeal on the arbitration board nor is it fitting that it should in any way impugn the composition of the arbitration board or any decision of the arbitration board. It would be even more reprehensible for this Board to do so prior to the arbitration board hearing the matter and arriving at its decision.

14. If the United Steelworkers of America does not press the arbitration proceedings to a conclusion, or if it can be established that there had been a breach of duty of good faith representation by the United Steelworkers of America in the arbitration proceedings, or if the arbitration Board finds on the evidence that it is without jurisdiction to deal with the matter, as the complainant suggests may happen, then in such circumstance, this Board may (although we have not so decided) entertain this complaint pursuant to the provisions of section 65 of the Act. However, until such time as the above events or events of a similar nature have taken place the complaint by the complainant is untimely and cannot be entertained."

This decision of the Board is given even further significance then read in the light of the recent amendments to the Labour Relations Act, which pursuant to the provisions of Section 60, impose a statutory duty of fair representation upon the union in these circumstances.

11. As previously indicated, the union, during the course of the first sitting of the Arbitration Board, indicated that it would not be pursuing Katevatis's grievance. Counsel for the respondent argues that the Board should, in any event, on the basis of the principles as stated above, also refuse to entertain the complaint as filed on his behalf since the remedy of arbitration was nevertheless "available" to him up to the time of the Arbitration Board's first day of sitting. Even if we should reject counsel's submission in this regard and determine that we should entertain this complaint insofar as it relates to Katevatis, we are nevertheless satisfied, having regard to the totality of the evidence as adduced, that Katevatis's termination was based upon the respondent's bona fide belief that he had previously quit and not for reasons associated with any union activity on his part. In Zachos's case, it would appear that the Arbitration Board is presently seized with the issue concerning its jurisdiction on the basis of his alleged probationary status. In these circumstances we adopt the reasoning as set out in the Collingwood Shipyards, Division of Canadian Shipbuilding and Engineering case (supra) where the Board concluded that "the fact that something may or may not happen in the future" is not a reason for entertaining a Section 79 complaint which has been referred to arbitration. In the result, we are therefore not prepared at this time to entertain the complaint insofar as it relates to Zachos although we specifically retain jurisdiction in this regard in the event that the said Arbitration Board should conclude that it lacks jurisdiction in Zachos's case.

12. It is to be noted that this complaint as filed under the "umbrella" provisions of Section 79 alleges specific violations of Sections 58 and 64 of the Act. Having carefully reviewed the principles as above stated, we have no hesitation therefore in concluding, in the particular circumstances of this case, that the Section 58 portion of this complaint must be dismissed. Counsel for the complainant however has drawn our attention to the mandatory provisions of section 64 which provide as follows:

(1) Where an employee engaging in a lawful strike makes an unconditional application in writing to his employer within six months from the commencement of the lawful strike to return to work, the employer shall, subject to subsection 2, reinstate the employee in his former employment, on such terms as the

employer and employee may agree upon, and the employer in offering terms of employment shall not discriminate against the employee by reason of his exercising or having exercised any rights under this Act.

13. This legislation is fairly recent which saw its inception as section 54a in The Labour Relations Amendment Act, 1970 (No. 2). It would appear that this is the first occasion in which the Board is specifically asked to review this provision. The evidence in this respect discloses that the legal strike continued from August 21 to December 3, 1973. With the exception of Pomponi whose individual application for reinstatement was received by the respondent on December 8, the individual applications for reinstatement by the remaining aggrieved persons are dated December 5 and were received by the respondent on December 6. In other words, it would appear that the respondent received these applications some 3 days after the legal strike had been terminated.

14. It is clear that the wording in Section 64 which specifies which employees can apply for reinstatement, is in the present tense. Section 4 of The Interpretation Act R.S.O. 1970, Chapter 225, makes reference to matters expressed in the present tense as follows:

"The law shall be considered as always speaking and, where a matter or thing is expressed in the present tense, it is to be applied to the circumstances as they arise, so that effect may be given to each Act and every part of it according to its true intent and meaning."

In our opinion therefore, the only circumstances which could bring Section 64(1) into play is one where "an employee engaging in a lawful strike makes an unconditional application in writing to his employer." To be presently speaking to cover a strike now ended, the section would, in our opinion, have to refer to the circumstance where an employee who had engaged in a lawful strike makes an unconditional application for reinstatement.

15. Our conclusion in this regard is further strengthened by reviewing the wording as appearing both in the subsection itself and in the Act as whole. In the former case, it is to be noted that in the last phrase relating to an employer's prohibition against discrimination, specific reference is made to past events. In other words while the term "engaging" appears to be unqualified in the first line of the subsection, the term "exercising or having exercised" specifically appears in the last phrase thereof. Turning now to the Act as a whole, it is clear that it is written in the present tense

but with some specific references to both past and possible future events. For example, Sections 55(5) and 55(6) both make reference to a business that "was sold". Section 58(a) disallows discrimination against a person because "the person was or is a member of a trade union or was or is exercising any other rights under this Act." Similarly, both Section 71(1) and 71(2) outlaw discrimination against a person because "he may testify in a proceeding...or because he has made or is about to make a disclosure...or because he has made an application or filed a complaint... or because he has participated or is about to participate in a proceeding under this Act." Section 81(1) allows the Board to inquire into complaints that a union "was or is requiring" an employer to assign work to persons in a particular trade union or craft. And Section 79(1), of course, refers to the Board inquiring into complaints arising out of past events. While this list is probably not exhaustive, it does appear sufficient to show that when the Act intends to refer to a situation that has occurred in the past, or which may occur in the future, it does so specifically.

16. In the result, we must conclude that as the aggrieved persons at the time they filed their individual applications were not employees "engaging in a lawful strike" they accordingly do not fall within the provisions of section 64(1) of the Act. Put another way, we find that the provisions of Section 64 have no application once the collective agreement and Exhibit "A" had been executed. If authority is required for our methods of interpretation leading to our conclusions in this regard, we would cite the decisions of: Davis J. in Commercial Credit Corp. of Canada Ltd. v Niagara Finance Co. (1940) 3 D.L.R. 1 (Sup. Court of Canada) at p.p. 8-9; Lord Reid in Inland Revenue Com'rs v Hinchy (1960) A.C. 748 (H.L.) at p767 and Thompson J. in Minister of Transport for Ontario v Phoenix Assurance Co. Ltd. (1973) 29 D.L.R. (3d) 513 (Ont. H. Ct.) at p.p. 517-518.

17. Accordingly, this complaint is dismissed in its entirety

5103-73-R: International Association of Bridge, Structural & Ornamental Ironworkers, Local 759 (Applicant) v. DINEEN ROADS AND BRIDGES LIMITED (Respondent).

BEFORE: R. A. Furness, Vice-Chairman, and Board Members A. Main and F. W. Murray.

APPEARANCES AT THE HEARING: Lorne A. Campbell, C. Lindquist and M. A. Green for the applicant; C. M. McKeown and R. Ridgway for the respondent; Raymond Koskie, B. Goodman and H. Mancinelli for Labourers' International Union of North America, Local 607.

DECISION OF THE BOARD:

March 15, 1974.

1. The name "Dineen Roads & Bridges Limited" appearing in the style of cause of this application as the name of the respondent is amended to read: "Dineen Roads and Bridges Limited".
2. At the commencement of the hearing, counsel for the Labourers' International Union of North America, Local 607 (hereinafter referred to as "Local 607") requested an adjournment of the hearing on the grounds that Local 607 did not receive Notice of the Hearing. This request for an adjournment was opposed by the applicant. After considering the representations of the parties, the Board ruled that Local 607 did not intervene in this proceeding until the date of the hearing, March 14, 1974, and did not become a party to the proceeding until that same day. The Board further ruled that Local 607 was not, under the Board's Rules of Procedure, entitled to Notice of the Hearing. The request of Local 607 for an adjournment based upon a claim of a denial of natural justice was denied. In addition, the Board further ruled that it would proceed with the application and would consider a motion for an adjournment on the grounds of prejudice if the occasion arises. In addition, the Board directed the applicant to supply particulars of its challenge to the alleged collective agreement between the respondent and Local 607. The applicant stated that the alleged collective agreement was not a collective agreement within the meaning of The Labour Relations Act because Local 607 did not represent the employees in the bargaining unit.
3. Counsel for Local 607 subsequently made a further motion to the Board for an adjournment on the grounds that he might be briefed by his client with a view to bringing court proceedings so as to prohibit the Board from dealing with this application. This request for an adjournment was opposed by the applicant. Counsel for Local 607 was not prepared to state that court proceedings would, in fact, be commenced. After hearing the representations of the parties, the Board denied the request of Local 607 for an adjournment based upon the possibility of court proceedings being commenced with respect to this application.
4. The Board then asked counsel for Local 607 if it was prepared to proceed to establish its interests in this proceeding. Counsel for Local 607 stated that in view of the denial by the Board of the request for an adjournment, Local 607 was not prepared to proceed further in this case. Thereupon, counsel for Local 607 and Mr. H. Mancinelli left the Board Room and took no further part in the hearing.
5. The respondent introduced evidence respecting the alleged collective agreement between the respondent and Local 607. The respondent was unable to prove the alleged collective agreement in evidence. After the conclusion of the evidence of the respondent

and after considering the representations of the parties, the Board ruled that having regard to the evidence before it and to the provisions of section 52 of The Labour Relations Act that there was neither evidence of the existence of the alleged collective agreement between the respondent and Local 607 nor that Local 607 was entitled to represent the employees in the alleged bargaining unit at the time the alleged collective agreement was entered into. Accordingly, the Board ruled that the alleged collective agreement was not a bar to this application for certification.

6. The Board finds that the applicant is a trade union within the meaning of section 1(1)(n) of The Labour Relations Act.

7. The Board further finds that this is an application for certification within the meaning of section 108 of The Labour Relations Act.

8. The Board further finds that all reinforcing rodmen in the employ of the respondent in the District of Kenora, including the Patricia Portion, save and except non-working foremen and persons above the rank of non-working foreman, constitute a unit of employees of the respondent appropriate for collective bargaining.

9. The Board is satisfied on the basis of all the evidence before it that more than sixty-five per cent of the employees of the respondent in the bargaining unit, at the time the application was made, were members of the applicant on February 6, 1974, the terminal date fixed for this application and the date which the Board determines, under section 92(2)(j) of The Labour Relations Act, to be the time for the purpose of ascertaining membership under section 7(1) of the said Act.

10. A certificate will issue to the applicant.

5050-73-U: John Bell (Complainant) v. AMALGAMATED METAL INDUSTRIES LIMITED (Respondent).

- and -

5051-73-U: John Bell (Complainant) v. International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO (Respondent).

BEFORE: D. H. Kates, Vice-Chairman, and Board Members A. Main and F. W. Murray.

APPEARANCES AT THE HEARING: R. I. Smith for the complainant; W. J. McNaughton and H. Lake for the respondent employer; S. Petronski, B. Goodman and J. Berkow for the respondent trade union.

DECISION OF VICE-CHAIRMAN D. H. KATES AND BOARD MEMBER F. W. MURRAY:
March 20, 1974.

1. The Board directs pursuant to section 58 of its Rules of Procedure that the complaint filed against Amalgamated Metal Industries Limited (Board File No. 5050-73-U and hereinafter referred to as "the respondent employer") be consolidated with the complaint filed against the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO (Board File No. 5051-73-U and hereinafter referred to as "the respondent trade union").
2. At the outset of the hearing counsel for the complainant requested leave of the Board to accede to an adjournment because a witness essential to the evidence he intended to adduce in support of the above complaints made no appearance at the hearing. Counsel indicated that no subpoena was requested of the Board because at all material times he was under the impression that the witness, Mr. Yvon Grigas, voluntarily undertook to appear at the hearing to testify on the complainant's behalf.
3. Counsel for the respondent employer indicated to the Board the probable reasons for Mr. Grigas' failure to appear. It appears that Mr. Grigas, a foreman in the employ of the respondent, did not attend the hearing on the representations of his employer that his testimony would not be needed as it applied the complainant's case against it. Presumably Mr. Grigas relied upon this representation with respect to the complainant's grievance against the respondent trade union. Counsel admits to the respondent employer's responsibility for this misunderstanding and thereby consented to the complainant's request for an adjournment.
4. Counsel for the respondent trade union objected to the request for the adjournment. He argued that the Board's procedures provided for the summoning of witnesses. Had the appropriate measures been taken the complainant would have been assured of the attendance of the desired witness. Furthermore, counsel argued that the respondent union would be inconvenienced for two reasons. Firstly, it was suggested that should the respondent trade union be held liable, as alleged, then the delay occasioned by the adjournment would prejudice the respondent union with respect to compensation. Secondly, the respondent union had arranged for the attendance of two witnesses; namely Mr. Nagold and Mr. M. Petronski. To adjourn the proceedings to another date would cause these persons some financial prejudice in loss of earnings and travelling costs.
5. Counsel for the complainant argued in reply that for the Board to deny the adjournment would in effect be a breach of the rules of natural justice in that the complainant would be denied in these circumstances an opportunity to be heard.

6. Thereupon, the Board recessed for the purpose of considering the representations of the parties. Upon returning counsel for the complainant apprised the Board of the following. In the event that the Board acceded to the complainant's request for an adjournment, he was prepared to make the following undertaking on behalf of his client. His client was prepared to compensate each of the two witnesses inconvenienced for travelling expenses incurred in order to attend the scheduled hearing and loss of wages and other supplementary employment benefits in an amount approximating \$250.00 each. Furthermore, it was agreed that compensation for the respondent's counsel fee in amount of \$225.00 would be paid by the complainant.

7. Counsel for the respondent union made it clear that it still resisted the adjournment. Nevertheless, it agreed that should the Board grant the adjournment the amounts mentioned in paragraph #6 were a realistic measure of the witnesses' inconvenience.

8. The Board repeats its decision given orally at the hearing. Board policy with respect to granting adjournments is set out in The Nick Masney Limited Case OLRB M.R. November 1968 p833; OLRB M.R. December 1968 p965; 70 CLLC ¶14,010 (H.C.) per Addy J; 70 CLLC ¶14,020 (CA) per Laskin J.A.) (as he then was). Suffice it say, that the Board is normally disposed to grant adjournments only on consent of the parties; or, where at a hearing, it is satisfied that the request for the adjournment is tied to circumstances beyond the control of the party and to proceed would prejudice the party making the request.

9. Here, on representations of counsel for the respondent employer, a key witness to the complainant's case was led to believe that his testimony would not be necessary with respect to the complaint filed against the respondent employer. No mention was made at the time these representations were made with respect to the complainant's complaint against the respondent trade union. This Board is satisfied that but for the misleading representation made with respect to the complaint filed against the respondent employer the witness, Mr. Grigas, would have attended the Board's hearing. The Board therefore grants the complainant's request for leave to adjourn these proceedings.

10. In reaching this conclusion, the Board was impressed by the undertaking of counsel for the complainant as set out in paragraph #6 herein. With respect to the respondent union's representations should it be found to be liable on the merits of the complainant's complaint, nothing herein is deemed to operate to its prejudice to make further representation on this matter at the appropriate time. The Board also considered the reasons in the recent case of Re Gasparetto et al and The City of Sault Ste. Marie (1973) 2 O.R. 847 (Div. Ct.) per Fraser J. in arriving at this ruling.

11. For purposes of clarity the Board notes that the respondent employer is not privy to any of the matters discussed in paragraph 6 and 7 herein.

12. The Registrar is directed to list this matter for continuation of hearing.

DECISION OF BOARD MEMBER A. MAIN: March 20, 1974.

1. I dissent.

2. I am satisfied that had the complainant taken the appropriate steps to secure a subpoena for the attendance of the desired witness at the Board's hearing scheduled for March 18, 1974, the complainant would have avoided the dilemma for which it is seeking extrication.

3. In short, I am not satisfied that the circumstances herein were so beyond the control of the complainant so as to justify the granting of an adjournment!

4715-73-U: Arthur Joseph Roberts (Complainant) v. OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 48 (Respondent).

BEFORE: D. H. Kates, Vice-Chairman, and Board Members O. Hodges and F. W. Murray.

APPEARANCES AT THE HEARING: A. J. Roberts, R. C. Fillion and D. I. Wakely for the complainant; L. C. Arnold and E. Russell for the respondent.

DECISION OF THE BOARD: March 20, 1974.

1. This is a complaint filed under section 79 of the Labour Relations Act wherein it is alleged that the complainant has been treated by the respondent contrary to its duty of fair representation as described under section 60 of the Act.

2. At the outset of the proceedings counsel for the respondent challenged the Board's jurisdiction to entertain the instant complaint. Counsel relies on the wording of section 60 in support of its challenge. It is argued that because the complainant at no time relevant to the launching of this complaint was "an employee in a bargaining unit", the Board is without authority to grant relief even if the respondent, at best, may be found to have acted arbitrarily, discriminatorily, or in bad faith with respect to its dealings with the complainant.

3. The facts surrounding the launching of this complaint are relatively straightforward and undisputed by the parties. The complainant up to February 17, 1973 was a member of the respondent organization and a duly elected business agent. On that date he was removed from office. Afterwards he continued to be a member in good standing of the respondent union and as such sought to be placed on the respondent's rostrum of members available for work at the trade.

4. In this regard the complainant is a journeyman plasterer who worked at this trade until elected to office in the respondent union. At all material times relevant to this complaint the respondent was a trade union party to a collective agreement between The Contracting Plasterers Association of Toronto, Inc. The following articles of the said agreement are of some relevance to the issues before this Board;

Article 1 - Terms of Agreement

(a) The Association for its members recognizes Local 48 as the sole bargaining agent for all its members in the employ of the employer, within the geographical jurisdiction of Local 48, from the first day of their employment, save and except above the rank of shop foreman.

(b) Local 48 recognizes the Contracting Plasterers Association of Toronto as the sole bargaining agent for the Association members, within the geographical jurisdiction of Local 48, and Local 48 of the Operative Plasterers' and Cement Masons' International Association hereby agrees that it will not sign any agreement with any contractor or employer which contains any more favourable clauses or terms of working conditions to the employer than those set out in this agreement.

(f) For purposes of this Agreement "members" (other than where reference is made to members of the Association), shall mean any person or persons under the jurisdiction of Local 48 who is in possession of a working membership card or a signed permit issued by designated officials of Local 48.

Article 2 - Hiring

(a) The Employer shall employ only members in good standing with Local 48 during the term

of this agreement and Local 48 shall give preference to supplying members in good standing to the Employer on a fifty-fifty basis, that is to say, for each member employed by the Employer, one member must be hired through the Local Union Office. The producing of a working membership card, or a signed permit issued by designated officials of Local 48, shall be accepted as a guarantee of membership. Any applicant failing to identify himself with the above-mentioned credentials shall be referred to Local 48 before being hired, or commencing work.

5. It is conceded by the respondent that if the complainant is the beneficiary of any representative rights at all, they would be incorporated under the collective agreement referred to above. The issue, of course, for the Board to determine is whether the complainant "is an employee" for whom the respondent party to that agreement owes a duty of fair representation.

6. Counsel for the complainant alleges that the respondent is in violation of its duty of fair representation for two reasons. Firstly, it is submitted that the respondent acted arbitrarily and discriminatorily in the manner in which the complainant was removed from elected office. And, secondly, this allegation is supported by the respondent's activities after his removal from office in allegedly "blacklisting" the complainant and thereby depriving him of the opportunity to pursue his chosen trade.

7. In answer to the jurisdictional argument submitted by counsel for the respondent, counsel argued that if the Board ruled that Mr. Roberts was not an employee for purposes of Section 60 then other unfair labour practice provisions of the Act (such as discharge for union activity) or, indeed, discharge contrary to the just cause provision of a collective agreement would be impossible to enforce. That is to say, the discharge, whether contrary to the Act or a collective agreement would deprive such persons of a remedy because they would at the time of filing a complaint have ceased to be "employees". Therefore, it is suggested to the Board that but for the violation by the respondent trade union of its duty of fair representation the aggrieved would otherwise be an employee for purposes of seeking relief under section 79 of the Act. In the same manner that a person remains an employee, once discharged, for purposes of challenging the legality of the employer's decision, so a member in good standing may challenge in these circumstances the decision of a trade union that deprives him of an opportunity for employment.

8. The Board wishes to address itself to the first ground for relief argued by counsel for the complainant. We are satisfied that with respect to the aggrieved's challenge to the propriety of the respondent's conduct in removing Mr. Roberts from the office of business agent, the Board is without jurisdiction to provide a remedy. Or, more precisely, the duty of fair representation owed by a trade union to an employee under section 60 of the Act does not contemplate controlling the manner in which a trade union conducts its affairs with its elected officials whether they be on the payroll or not. The case law indicates that the propriety of a trade union's behaviour vis à vis its members is governed by its constitution and by-laws and the procedural remedies provided therein. And recourse must be made by an aggrieved member to the governing rules provided under the constitution for relief. The safeguard provided by the controlling supervision of the courts are his assurance that these rules will be implemented fairly and impartially. (see; White v Kuzych (1951) A.C. 585; Lee v Showmans Guild (1952) All. E.R. 1175; Orchard v Tunney (1957) S.C.R. 436; 8 D.L.R. 273; Jurak et al v Cunningham (No.1) (1959) 20 D.L.R. (2d) 377; Jurak et al v Cunningham (No. 2) (1959) 20 D.L.R. (2d) 381; Gee v Freeman et al (1958) 26 W.W.R. 546).

9. The second argument relied upon by counsel for the complainant relates to whether a trade union owes a duty of fair representation to its members with respect to the administration of "the hiring hall" provisions of a collective agreement. By operation of clause (a) of subsection 1 of section 38 the Legislature permits the parties to a collective bargaining relationship to negotiate a variety of union security clauses one of which is the "closed shop". The "closed shop" enables the trade union to insist that an employer engage persons who are members in good standing of that organization. A union "hiring hall" provision of the type negotiated and described in the collective agreement referred to in paragraph 4 herein is in fact a closed shop. The employer subject to negotiated limitations must rely upon the trade union to complement his work force. The more sophisticated and skilled the labour required the more dependent is the employer on the trade union for filling vacancies in his work force. This is especially true of employer-contractors in the construction industry. Because of the seasonal and uncertain nature of the construction industry contractors find recourse to the pool of members available on the union's hiring rostrum a useful source of labour. The trade union is equally assured that members in gaining employment under the auspices of the union office will not be displaced by non-members. Or, in the event members are not available for employment, those persons the employer does hire by operation of the collective agreement must become members. In short, there is a mutuality of interest both by the trade union and the employer with respect to the satisfactory operation of the hiring hall.

10. In a like manner, members of the trade union are dependent

for employment upon the implementation of the "hiring hall" provision of a collective agreement. The very purpose of the hiring hall is to confer upon members in good standing a preference in the securing of available employment. Hence should an employer bound by a union security clause be in need of employees the member in good standing may be somewhat assured that those jobs will be filled by members and not by non-members. In short, acceptance by the employer of a union hiring hall provision in a collective agreement alters in a meaningful way a traditional prerogative with respect to the composition of his work force. And by the shifting of that prerogative to the union hiring hall, the employer has thereby restricted the market of eligible candidates for employment to union members in good standing.

11. A more accurate description of the effect of the union security clause on the employer-employee relationship is described by the S.C.C. in Syndicat National Catholiques des Employes de Magasins de Quebec Inc. v Pacquet Ltee (1959) 18 D.L.R. (2d) 346 at p 353 (per Judson J.).

"...it is obvious that one may have a collective agreement which is satisfactory to the parties without this (union security) clause. When, however, the parties have agreed upon it, it is to me just as much regulatory of the employer-employee relationship as any other clause of the collective agreement. It is directly concerned with the right to hire and the right to retain employment, for without accepting this term a person cannot be hired, or if he is already an employee, cannot retain his employment." (bracketed portion added by the Board).

12. The issue before this Board is whether in the administration of the hiring hall a trade union is subject to the duty of fair representation as described under section 60 of the Act with respect to the filling of job vacancies by rank and file members. Or, more precisely, does the language of section 60 in that it speaks in terms of "employees in a bargaining unit" ipso facto preclude the Board from granting relief to members or other persons who are not employees in the event of a finding of arbitrary, discriminatory or bad faith conduct by the union in the implementation of its "hiring hall" procedures?

13. Clause (a) of subsection (4) of section 79 of the Act provides that if the Board is satisfied that upon the complaint of a person that person has been refused employment...discriminated against...or otherwise dealt with contrary to this Act as to his

...opportunity for employment...by any employer or other person or a trade union, it shall determine what, if anything the employer, other person or a trade union shall do or refrain from doing with respect thereto, and such determination may include the hiring...of the person concerned with or without compensation or compensation in lieu of hiring...for loss of earnings... In short, if section 60 applies to the circumstances delineated by the complaint the Board is quite satisfied that the Legislation contemplates the granting of relief to an aggrieved prejudiced by such unfair conduct. The key phrase, however, in section 79(4) is the words "contrary to this Act". And in this regard must a member for purposes of section 60 be an "employee" in order to claim such relief?

14. The Board has canvassed other unfair labour practice provisions of the Act with a view to ascertaining the type of circumstance contemplated before relief (as expressed under section 79(4) and as described in paragraph 13 herein) will be accorded an aggrieved where he has been the object of unfair practices contrary to the Act with respect to hiring or being engaged in employment. For example section 58 of the Act provides;

58. No employer, employers' organization or person acting on behalf of an employer or an employers' organization,

- (a) shall refuse to employ or to continue to employ a person, or discriminate against a person in regard to employment or any term or condition of employment because the person was or is a member of a trade union or was or is exercising any other rights under this Act;
- (b) shall impose any condition in a contract of employment or propose the imposition of any condition in a contract of employment that seeks to restrain an employee or a person seeking employment from becoming a member of a trade union or exercising any other rights under this Act; or
- (c) shall seek by threat of dismissal, or by any other kind of threat, or by the imposition of a pecuniary or other penalty, or by any other means to compel an employee to become or refrain from becoming or to continue to be or to cease to be a member or officer or representative of a trade union or to cease to exercise any other rights under this Act.

15. By these provisions the Act proscribes conduct by an employer with respect to discrimination in employment or opportunity for employment because of union activity. In short, imposition by an employer whether directly or indirectly of conditions restraining union activity as a term of the employment contract is quite clearly prohibited. And in this regard it is important to note that the sections quoted speak in terms of "persons" and not just "employees". More particularly, clause (b) of section 58 provides that no employer shall impose a condition in a contract of employment that seeks to restrain an employee or persons seeking employment from becoming a member of a trade union. In short, the Legislation anticipates that during the hiring process unfair, discriminatory activity contrary to the purpose of the Act might be inflicted upon persons seeking employment and provides for such contingencies.

16. Furthermore under section 58(a) a person once hired cannot be discharged for union activity. And in this regard the Legislature preserves the employment status of such discharged persons for purposes of seeking relief under the Act. Under section 1(2) "for purposes of the Act, no person shall be deemed to have ceased to be an employee... by reason of his being dismissed by his employer contrary to this Act or to a collective agreement." Thus a discharged person for the limited purpose described herein preserves his employment status until he is otherwise found to be discharged for reasons not contemplated by the Act. In this regard counsel's argument with respect to the suspect status of aggrieved persons discharged contrary to the Act or the terms of a collective agreement to seek redress is without foundation.

17. Would the Board therefore be on a sound footing in granting relief to persons who are not employees for purposes of section 60 of the Act? In this regard the Board has come to the conclusion that it would do violence to the intent of the Legislature if it presumed that members of a trade union affected by a union hiring hall are "employees in a bargaining unit" for purposes of supervising the operation of that hiring hall through the union's alleged duty of fair representation.

18. We are satisfied that it was the intention of the Legislation to restrict the scope of a trade union's duty of fair representation to employees in a bargaining unit. It would be a forced interpretation of the word employee in section 60 for the Board to presume the contrary where the Legislature permits parties to the collective bargaining relationship under section 38(1)(a) of the Act to determine through negotiation the very conditions upon which the employer-employee relationship may be established. It is the Board's opinion that if the Legislature intended the scope of the trade union's duty of fair representation to extend beyond employees in a bargaining unit it would have done so in the clearest of language. The Legislature has

given the Board a clear mandate with respect to granting relief against discriminatory hiring practices based on trade union activity. It has not done so for purposes of section 60.

19. With respect to the above paragraph we do not wish to leave the impression that had the word "person" been contained in lieu of or in addition to the word "employee" in section 60 the Board would thereby have been on a sound jurisdictional basis to proceed with the instant complaint. (see; Barbara Jarvis v Associated Medical Services et al 64 CLLC ¶ 15,511 (SCC) per Cartwright J. at p845). Rather, it may very well be that in order to hold a trade union accountable (through the duty of fair representation) with respect to the administration of the hiring hall the word "member" would be more appropriately inserted. (see; Canadian Pittsburgh Industries v H. Orloff et al (1961) OWN 223; 61 CLLC ¶ 15,373 at p330 (per McRuer C.J.)).

20. The Board therefore holds that under section 60 a trade union's duty of fair representation does not extend to members in good standing who are not employees in a bargaining unit. The Board therefore finds it is without jurisdiction to proceed and accordingly terminates these proceedings.

5065-73-U: George Wilson (Complainant) v. THE CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 1334 (Respondent).

BEFORE: G. W. Reed, Q.C., Chairman, and Board Members H.J.F. Ade and E. Boyer.

DECISION OF THE BOARD: March 25, 1974.

1. This is a complaint filed under section 79 of The Labour Relations Act in which the complainant, who is also the grievor, alleges that he has been dealt with by the respondent trade union contrary to the provisions of section 60 of The Labour Relations Act. A field officer was appointed to inquire into the complaint and he has now reported to the Board.

2. The gist of the complaint is that the complainant, who was employed by the University of Guelph, was represented for collective bargaining purposes by the respondent trade union. Negotiations for a new collective agreement commenced in May of 1973 and a new contract was ultimately signed on November 9, 1973 by the respondent trade union and the University of Guelph. Article 21.01 of the collective agreement provides as follows:

The University agrees to pay and the Union agrees to accept for the term of this Agreement the rates of wages as outlined in Schedule "A" attached hereto and forming part of this

Agreement. However, the rates provided in Schedule "A" to be effective 1 May 1973 shall not apply to persons whose employment terminated between that date and 9 November 1973.

The complainant left the employ of the University on October 5, 1973. Under the provisions of Article 21.01 he was therefore not entitled to the increase in wages which became effective May 1, 1973. It is the complainant's position that in negotiating such a contract the respondent trade union acted in an arbitrary and discriminatory manner and showed bad faith in not taking care of its members in negotiating a clause in a collective agreement which denied him retroactive pay up to the time he left the employ of the University.

3. Assuming, but without deciding, that the negotiation of such a clause as Article 21.01 could in some way be regarded as a breach of section 60 of The Labour Relations Act which imposes a duty of fair representation on a trade union, it seems clear that the breach of such duty did not take place until the collective agreement was signed by the trade union. Section 60 imposes a duty on the trade union to fairly represent employees in a bargaining unit. At the time the trade union signed the collective agreement the complainant was not an employee in the bargaining unit, having resigned over a month prior to the signing of the agreement. In these circumstances, it is our opinion that the complainant is not entitled to rely on the provisions of section 60 of The Labour Relations Act.

4. Having regard to the above considerations, it is the opinion of the Board that no useful purpose would be served in putting the complaint on for a formal hearing by the Board to inquire into the merits. Stated another way, in the opinion of the Board the complaint does not make out a prima facie case for the remedy requested and pursuant to section 46(1) of the Board's Rules of Procedure the complaint is therefore dismissed.

5294-73-U: Frank Tomsic (Complainant) v. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA: CARPENTERS DISTRICT COUNCIL OF TORONTO AND VICINITY (Respondent).

BEFORE: G. W. Reed, Q.C., Chairman, and Board Members H.J.F. Ade and E. Boyer.

DECISION OF THE BOARD: March 25, 1974.

1. This is a complaint under section 79 of The Labour Relations Act in which the complainant, who is also the grievor, alleges that he has been dealt with by the respondent trade union contrary to the provisions of section 60 of The Labour Relations Act. A field officer was appointed to inquire into the complaint and he has now submitted his report to the Board.

2. It appears from the material before us that the complainant, a member of Local 266 of the Carpenters Union which apparently is a member of the Carpenters District Council of Toronto and Vicinity, was sent to a job in the Toronto area. On his first pay day he was paid in cash but subsequently was paid by cheque and these cheques were not honoured.

3. The gist of the complaint is that the respondent trade union failed to investigate the firm to which the complainant was sent to work and failed to ascertain the ability or inability of the said firm to pay wages. It is submitted that this constitutes a breach of the duty of fair representation imposed on the union by section 60 of The Labour Relations Act.

4. At the time that the complainant was sent to work for the company, the respondent trade union did not have a collective agreement with the company nor did it have bargaining rights for any of the company's employees. Some weeks after the complainant quit the employ of the company in question, the company and the respondent trade union entered into a collective agreement. The complainant further alleges that the union should not have signed an agreement with the company when the union knew that money was still owing by the company to the complainant. The complainant admits that once the agreement was signed the union phoned him and informed him that he would be receiving his money because an agreement had been signed.

5. Section 60 of The Labour Relations Act imposes a duty of fair representation on a trade union in the representation of employees in a bargaining unit. At the time the complainant was referred to work for the company and while at work the trade union did not have any bargaining relationship with the company. It did not represent any employees of the company in a bargaining unit. After the complainant quit the employ of the company he was no longer an employee in a bargaining unit. It follows therefore that the complainant is not entitled to rely on section 60 to found his claim against the respondent trade union. Even if it could in some way be said that section 60 applied to the trade union and the complainant after the complainant left the employ of the company, we find no merit in the suggestion that the entering into the collective agreement by the trade union with the employer while the employer still owed the complainant money constituted a violation of section 60. On the contrary, it appears from the complainant's statement that the trade union believed that in so-doing, the complainant would receive his back pay.

6. Having regard to the above considerations, we are of the opinion that the complaint does not make out a prima facie case for the remedy requested and pursuant to section 46(1) of the Board's Rules of Procedure the complaint is dismissed.

5206-73-R: Ontario Housing Corporation Employees, Local 767 C.U.P.E.
(Applicant) v. DEL ZOTTO PROPERTY MANAGEMENT (Respondent).

BEFORE: Rory F. Egan, Vice-Chairman, and Board Members J. D. Bell
and O. Hodges.

APPEARANCES AT THE HEARING: Maurice A. Green and J. Salzer for the
applicant; Michael G. Horan for the respondent.

DECISION OF THE BOARD: March 26, 1974.

1. This is an application for certification. During the course of the hearing a question was raised with respect to the duties and responsibilities of John Conway who is classified in the lists filed by the respondent as superintendent. The respondent submitted that this person exercises managerial functions within the meaning of The Labour Relations Act and should therefore be excluded from the bargaining unit. To exclude Conway would reduce the proposed bargaining unit to one employee which would result in the dismissal of the application.
2. The submission of the respondent with respect to Conway was disputed by the applicant and the respondent requested the appointment of an Examiner.
3. It was pointed out to the Board that the applicant had made a prior application for certification, Board File No. 4352-73-R, as bargaining agent for the identical employees of the respondent at the property named in this application. The same issue was raised with respect to the duties and responsibilities of John Conway and an Examiner was appointed to inquire into the composition of the bargaining unit which direction the parties agreed included an examination into the duties and responsibilities of John Conway.
4. The Examiner conducted his inquiry as directed and reduced his report to writing. The applicant proposed to this panel of the Board that it would appear to be reasonable and expeditious for the Board to use the evidence contained in the Examiner's report in the previous case, i.e. File 4352-73-R, rather than to appoint another Examiner to go through precisely the same kind of examination involving the same employee and the same issue.
5. It would appear to the Board that unless the respondent claims that there has been a substantial change in the duties and responsibilities of John Conway between the date of the prior application and that of the present application that it would be in conformity with the purposes of the Act and more expeditious, just and reasonable to make use of the evidence contained in the Examiner's report for the purposes of the present application.

6. It is to be noted that the panel of the Board who dealt with the prior application have not issued any decision based upon the evidence contained in the Report and that therefore this panel is free to deal with the evidence untrammelled by any prior decision.

7. The Board therefore directs that unless the respondent by written representations to be received by the Board on or before April 4, 1974 establishes that a substantial change has taken place in the duties and responsibilities of John Conway during the period above-noted, the Examiner's report in Board File No. 4352-73-R shall become and be treated as the Examiner's report in the present application.

8. In the absence of representations within the time limited above, the Board will proceed to deal with the application upon the evidence based in the Examiner's report subject only to the provisions of Rule 42 of the Board's Rules of Procedure.

9. The Registrar is directed to serve the parties with copies of the Examiner's report referred to above.

5246-73-R: The Canadian Union of Public Employees (Applicant) v. CITY OF TIMMINS HOME FOR THE AGED, GOLDEN MANOR (Respondent).

BEFORE: Rory F. Egan, Vice-Chairman, and Board Members J. D. Bell and O. Hodges.

APPEARANCES AT THE HEARING: W. A. Acton for the applicant; Donald MacOdrum and John K. Bracken for the respondent.

DECISION OF THE BOARD: March 26, 1974.

1. The name "City of Timmins Home for the Aged, Golden Manor" appearing in the style of cause of this application as the name of the respondent is amended to read: "City of Timmins Home for the Aged, Golden Manor".

2. The Board finds that the applicant is a trade union within the meaning of section 1(1)(n) of The Labour Relations Act.

3. This is an application for certification in which the applicant proposes a bargaining unit comprising all employees of the City of Timmins Home for the Aged, Golden Manor, employed for not more than 24 hours per week, save and except supervisors, persons above the rank of supervisor, office employees and employees covered by the existing collective agreement under Local #1140.

4. The parties are currently negotiating for renewal of a collective agreement in which the bargaining unit is described in Article #3 in the following terms:

3.01 That the Employer recognizes the Union as the sole and exclusive collective bargaining agent for collective bargaining purposes for all employees of the Employer who may occupy the positions set forth in Schedule 1 annexed hereto and forming part of this Agreement, such group of employees hereinafter being referred to as the Union, save and except professional medical staff, graduate nursing staff, undergraduate nurses, graduate pharmacists, undergraduate pharmacists, graduate dietitians, student dietitians, technical personnel, supervisors, persons above the rank of supervisors, adjuvant supervisors, office staff, students, casual, temporary, and persons employed for less than twenty-four (24) hours per week, who shall be herein referred to as part-time employees.

5. Article 30.04 of the collective agreement defines the terms "temporary" and "casual" as follows:

30.04 That it is understood that the terms "Temporary", and/or "Casual", contained herein shall mean an employee hired on a temporary or casual basis for a period not to exceed three and one-half (3 1/2) consecutive months, that should such employee continue to be employed beyond the period above-mentioned, such employee shall rank as a probationary employee and seniority shall begin from the original date of employment.

6. The respondent submitted that inclusion of the employees concerned within the bargaining unit described in the collective agreement had been proposed and that certification would therefore be superfluous. The respondent further requested the Board to direct a vote in the matter.

7. The membership evidence, subject to the final determination of the bargaining unit, entitles the applicant to certification. In addition, the resolution of the composition of the bargaining unit cannot be left to be determined on the sole basis of a proposal made during the course of bargaining. The Board therefore declines to give effect to the submissions of the respondent.

8. The respondent further submitted that the employees concerned were not regularly employed for not more than 24 hours per week. The

respondent stated that it kept a roster of available persons whom it called in on an ad hoc or casual basis and who might decline to come in on any particular occasion. This submission of the respondent was not contradicted by the applicant.

9. In light of the circumstances outlined by the respondent and having in mind the bargaining unit set out in Article #3 of the collective agreement, the Board finds that all employees of the respondent, save and except professional medical staff, graduate nursing staff, undergraduate nurses, graduate pharmacists, undergraduate pharmacists, graduate dietitians, student dietitians, technical personnel, supervisors, persons above the rank of supervisor, adjuvant supervisors, office staff and employees covered by the bargaining unit described in the collective agreement made between the parties effective June 1, 1972, constitute a unit of employees of the respondent appropriate for collective bargaining.

10. For the purposes of clarity, the Board notes that the above unit is what is referred to as a "tag-end" unit and includes temporary and casual employees, students and any employees that may be regularly employed for not more than 24 hours per week.

11. The Board is satisfied on the basis of all the evidence before it that more than sixty-five per cent of the employees of the respondent in the bargaining unit, at the time the application was made, were members of the applicant on March 5, 1974, the terminal date fixed for this application and the date which the Board determines, under section 92(2)(j) of The Labour Relations Act, to be the time for the purpose of ascertaining membership under section 7(1) of the said Act.

12. A certificate will issue to the applicant.

5248-73-R: The Norfolk Board of Education Office Employees' Association (Applicant) v. THE NORFOLK COUNTY BOARD OF EDUCATION (Respondent).

BEFORE: D. H. Kates, Vice-Chairman, and Board Members P. J. O'Keefe and J.E.C. Robinson, Q.C.

APPEARANCES AT THE HEARING: J. L. Harrison for the applicant; no one appearing for the respondent.

DECISION OF THE BOARD: March 27, 1974.

1. The Board having regard to the evidence and representations of counsel for the applicant, finds the applicant to be a trade union within the meaning of section 1(1)(n) of The Labour Relations Act.

2. The Board further finds that all office and clerical employees employed by the respondent in the County of Norfolk save and except

superintendent of business affairs and director of education and persons above that rank, constitute a unit of employees of the respondent appropriate for collective bargaining.

3. For the purpose of clarity the Board notes the agreement of the parties with respect to the exclusion from the bargaining unit of M. Gilbert, secretary to the business administrator, and L. Vince secretary to the Director of Education because they fall under the provisions of section 1(3)(b) of the Act.

4. The Board has examined with some concern the evidence of membership filed by the applicant in support of its claim for bargaining rights. They are photocopies of documents that purport to indicate that the undersigned in each case is an office employee in the employ of the respondent, that each is a member of the applicant trade union, and that the required initiation fee was paid. Save in two circumstances, the signatures purport to reflect copies of the counter-signature of the treasurer of the applicant and a date appears on each of the documents described herein. In the case of two documents, the signature of the treasurer seems to have been penned in after the photocopies were taken.

5. The Board usually relies on the "best evidence" in accepting documents indicating the voluntary wishes of employees to be members of a trade union. The Board relies heavily on such evidence and normally accepts documents indicating membership in a trade union at face value. In this regard such reliance is usually predicated upon the filing of the authentic, original membership cards. The Board imposes such strict standards with respect to the acceptability of such evidence in order to avoid the onerous task of requiring oral testimony of each and every person who purports to be a member of a trade union pursuant to an application for certification. In short, the practice of the Board in satisfying itself of the true and voluntary wishes of employees who desire to be members of a trade union is to rely on "the best evidence" available.

6. The hazard of accepting photocopy evidence is indicated in the two instances referred to in paragraph #4 herein. In those instances, the signature of the treasurer is handwritten on two cards. That is to say, in those examples the photocopies are not a true replica of the original cards. It is noted that this matter was not disclosed in the Form 8, Declaration Concerning Membership Documents. It follows, therefore, that for the Board to accept the membership evidence filed by the applicant we would have to condone an obvious (whether intended or not) misrepresentation. The Board, therefore, does not hesitate to set aside all of the applicant's evidence of membership.

7. In order that the Board's decision be not misunderstood, it wishes to add the following for the applicant's benefit. The Board,

in most circumstances, will require that documents purporting to be membership cards be filed in their original form. Nevertheless, there may very well be circumstances where photocopy evidence may be the only evidence available for purposes of establishing a claim to representative rights. In such instances, the Board is of the opinion that the matter of the photocopy evidence should be disclosed in advance and that the applicant be prepared, at the hearing, to establish the authenticity of such evidence.

8. The application is therefore dismissed.

5088-73-R: The International Brotherhood of Electrical Workers, Local 636 (Applicant) v. THE CORPORATION OF THE CITY OF MISSISSAUGA (Respondent) v. Canadian Union of Public Employees, Local 66 (Intervener).

BEFORE: R. A. Furness, Vice-Chairman, and Board Members D. B. Archer and F. W. Murray.

APPEARANCES AT THE HEARING: A. M. Minsky, K. Woods and J. Kane for the applicant; G. G. Smith and S. A. Keith for the respondent; S. R. Hennessy and W. A. Acton for the intervener.

DECISION OF THE BOARD: March 27, 1974.

1. The applicant has applied to the Board under section 55 of The Labour Relations Act with respect to its bargaining rights as a result of an erection of one or more municipalities into another municipality or an amalgamation, under or other joining of two or more municipalities involving the respondent and The Corporation of the Town of Port Credit (hereinafter referred to as "Port Credit") which occurred on or about January 1, 1974.

2. The applicant claims that as a result of the foregoing, the respondent is bound by a collective agreement entered into by the applicant and Port Credit in effect from March 4, 1973 until March 3, 1974, covering employees engaged in the public works department of Port Credit. The applicant also claims that the respondent is bound by a collective agreement entered into by the applicant and The Port Credit Community Centres Board of Management date March 4, 1973, covering employees engaged in the maintenance and operation of community centre arenas.

3. The applicant requests the following relief:

(a) a declaration that it is the bargaining agent for the employees of the respondent engaged in each of the following units which are appropriate for collective bargaining:

- (i) the public works department; and
- (ii) the maintenance and operation of community centre arenas,

and (b) a declaration that the respondent is bound by the collective agreements referred to in paragraph two herein.

4. On January 1, 1974, by virtue of section 2(1)(a) of The Regional Municipality of Peel Act, 1973, S.O. 1973, c.60, The Corporation of the Town of Port Credit and The Corporation of the Town of Streetsville were amalgamated as a city municipality bearing the name of The Corporation of the City of Mississauga and certain portions of the Town of Mississauga and the Town of Oakville were annexed to such city. At the time of the amalgamation, the intervener and The Corporation of the Town of Mississauga were parties to a collective agreement effective from November 19, 1973, until December 31, 1974, covering employees in the Engineering and Works Department.

5. The parties were in agreement concerning the pertinent facts of this application. While the applicant initially suggested that the number of employees involved varied somewhat from the figures supplied by the respondent, the parties subsequently agreed to accept the figures supplied by the respondent. In the Engineering and Works Departments of the Corporation of the Town of Mississauga, the intervener was the bargaining agent for 139 employees. As of February 7, 1974, the respondent employed these 139 employees in its Engineering and Works Department together with six employees, formerly employees of the Corporation of the Town of Streetsville, hereinafter referred to as "Streetsville", (who were not represented by any trade union) and ten employees who were formerly employees of the Works Department of Port Credit and represented by the applicant as their bargaining agent. In addition, in the Parks Department of the Corporation of the Town of Mississauga employed 77 persons (who were not represented by any trade union). As of February 7, 1974, the respondent employed an additional two former employees of Streetsville (who were not represented by any trade union) and a further seven additional former employees of The Port Credit Community Centres Board of Management who were represented by the applicant.

6. The employment complement of the respondent's Engineering and Works Department and Parks Department is:

<u>Engineering and Works Department</u>	<u>Parks Department</u>
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Approximate present number
of employees of respondent

155

86

Formerly employees of:

Port Credit	10	7
Streetsville	6	2
Town of Mississauga	139	77

Number of Employees
represented by:

Applicant	10	7
Intervener	139	0
No trade union	6	79

Percentage of representation
claimed by:

Intervener	89.7%	Nil
Applicant	6.5%	8.1%

7. The applicant adopted the position that there has been a deemed intermingling of employees in the circumstances of this application pursuant to section 55(11) of The Labour Relations Act, that it had bargaining rights and exercised them for a period of time with respect to the employees referred to in paragraph two herein and that these bargaining rights had been transferred by statute. While the applicant admitted the disparity in the number of employees it represented in terms of the overall picture, it urged that it be permitted to participate in a representation vote in each of the respondent's two departments under consideration, namely, the Engineering and Works Department and the Parks Department.

8. The intervener requested that it be declared the bargaining agent of the respondent's employees in a bargaining unit of the Engineering and Works Department and the community centre workers, or alternatively, that it be declared the bargaining agent without a representation vote for the employees of the respondent in the Engineering and Works Department and that the community centre workers be permitted to decide by means of a representation vote whether they wished to be represented by the intervener or by no trade union.

9. The respondent maintained that the Parks Department and the Engineering and Works Department are separate and distinct departments and that the employees of these two departments do not share a community

of interest. The respondent argued that representation votes were unnecessary and that if a representation vote were directed, it ought to be between the applicant and the intervener with respect only to the Engineering and Works Department.

10. The creation of the Corporation of the City of Mississauga on January 1, 1974, was the result of the amalgamation of municipalities within the meaning of section 55(11) of The Labour Relations Act. By virtue of the provisions of section 55(11), the employees of the municipalities concerned are deemed to have been intermingled. Section 55(11) also provides that the Board may exercise the like powers as it may exercise under subsections (6) and (8) of section 55 with respect to the sale of a business.

11. The purpose of section 55 of The Labour Relations Act is, subject to the provisions set out therein, to continue the bargaining rights of a trade union which had represented employees in a bargaining unit where the employer has sold his business or where the circumstances contemplated by section 55(11) occur. Where two or more bargaining units are, as the result of a sale and the intermingling of employees, merged into one, as in the present application, the need for stability in collective bargaining relationships and plain common sense requires that, where there is a large disparity in the size of the two groups of employees, there would not be a representation vote, but rather a declaration should be made that the trade union representing the great majority of the employees is to be the bargaining agent for the new bargaining unit. See the Alliance Dairy Limited case, OLRB August 1966, p.336. In all of the circumstances of this application, the Board sees no reason to conduct representation vote.

12. In the present application, there is no evidence before the Board to support the position of the intervener that the Engineering and Works Department and the Parks Department of the respondent ought to be combined into one bargaining unit.

13. Having regard to the evidence before it and to the representations of the parties, the Board declares that the intervener is the bargaining agent for all employees of the respondent in its Engineering and Works Department, save and except section heads and foremen, persons above the rank of section head and foreman, office staff and students hired for the school vacation periods.

14. In addition, in the circumstances of this application, the Board declares that the respondent is not bound by the collective agreements between the applicant and Port Credit referred to in paragraph two herein and that no trade union is the bargaining agent for employees of the respondent in its Parks Department.

5350-73-U: NORONT STEEL LIMITED (Applicant) v. International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, Local 128 and The International Association of Bridge, Structural and Ornamental Ironworkers Local Union 786 (Respondent).

BEFORE: Frank V. Boscariol, Vice-Chairman, and Board Members A. Main and F. W. Murray.

APPEARANCES AT THE HEARING: R. B. Cumine and J. Urquhart for the applicant; J. D. Carroll, S. Petronski, A. Purdy and R. Koskie for the International Brotherhood of Boilermakers, Local 128; no one appearing for the Ironworkers Local Union 786.

DECISION OF VICE-CHAIRMAN FRANK V. BOSCARIOL AND BOARD MEMBER A. MAIN: March 28, 1974.

1. This is an application filed pursuant to the provisions of Section 123 of The Labour Relations Act, wherein the applicant is seeking relief in relation to both of the respondent trade unions as named in these proceedings, viz. the International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, Local 128 and The International Association of Bridge, Structural and Ornamental Ironworkers' Local Union 786, hereinafter referred to as the Ironworkers' Local and the Boilermakers' Local, respectively. Although the Ironworkers' Local was duly notified of these proceedings, no reply was filed in this regard and no one appeared on its behalf during the hearing of this matter on March 21, 1974.

2. Having carefully reviewed the evidence as adduced in relation to the Ironworkers' Local, we are satisfied that the members of the said Ironworkers' Local employed by the applicant at the Whitefish Falls project are engaged in an unlawful strike. In this respect, the applicant requests that the Board make a cease and desist order concerning these employees as regards their participation in the said unlawful strike and that the Board should direct that they return to their employment. It is clear, however, that none of these employees have been named as parties to these proceedings. Further, our records disclose that only the respondent trade unions, and not any of these employees, were specifically advised by registered mail of this application pursuant to Section 98 of the Board's Rules of Procedure. In these circumstances, we are satisfied that the Board would have no authority to issue such a direction and the request in this regard is accordingly denied.

3. The applicant further requested at the hearing of this matter, that the Board issue a direction to the Ironworkers' Local and their officers requiring them, in effect, to instruct their members to return to work. It is noted that this relief was not specifically sought for in the application as originally framed and we query the

propriety of the Board entertaining such a request at this stage of the proceedings in the particular circumstances of this case where the Ironworkers' Local, apparently on the basis of the representations as contained in the application, chose not to appear before us in this regard. However, even if we were disposed to entertain such a request, we find a further impediment in the evidence itself to the Board issuing directions to the Ironworkers' Local for calling or authorizing an unlawful strike or in the alternative, to an officer of the Ironworkers' Local for counselling, procuring, supporting or encouraging an unlawful strike. The only evidence presented before us in this respect is to the effect that James Urquhart, the applicant's supervisor, received a phone call from H. Bouchard, President of the Ironworkers' Union on March 19, 1973, inquiring as to whether the employees in question had gone into work that day or whether they had respected the picket line. In our opinion, the mere acknowledgment of the picket line by Bouchard to Urquhart in these circumstances does not of itself bring the matter within the provisions of Section 123 of the Act.

4. The evidence as adduced in relation to the Boilermakers' Local is to the effect that certain persons caused the access road leading to the project to be locked. Although the applicant alleged that these persons were in fact members of the Boilermakers' Local, there was no direct evidence led to substantiate this position. The only direct evidence involving the Boilermakers' Local in this regard is to the effect that Urquhart on March 13, 1973, observed Adrian Purdy, the assistant business agent of the Boilermakers' Local sitting in one of the cars blocking the roadway to the project and that he was speaking to some unidentified persons at this time.

5. Having regard to the nature of the evidence as adduced in this regard and taking into account the representations of the parties thereto, we are not satisfied that such evidence establishes that the Boilermakers' Local "called or authorized ... an unlawful strike" or that any of its officers, officials or agents "counselled or procured or supported or encouraged an unlawful strike or threatened an unlawful strike", pursuant to Section 123 of the Act and the relief sought by the applicant must, on this ground alone, be rejected.

6. Much of the argument as presented to this Board by counsel on behalf of the respondent Boilermakers' Local is to the effect that this Board in these circumstances should apply the jurisprudence as developed by the courts in relation to applications for injunctive relief. It would appear that the Board has heretofore specifically dealt with this issue in the North Simcoe Electrical Contracting Limited case (1973) OLRB M.R. 36 where, inter alia, significant distinctions are drawn between Court and Board proceedings in this area. Nevertheless, we are cognizant of the extraordinary powers granted to the Board as generally set out in Section 123 of the Act

and it is for this reason that we must be circumspect and require clear evidence to establish on the balance of probabilities that the circumstances warrant the relief as requested.

DECISION OF BOARD MEMBER F. W. MURRAY: March 28, 1974.

I dissent for reasons to be given later in writing.

4774-73-R: Labourers' International Union of North America, Local 527 (Applicant) v. TAGGART CONSTRUCTION LIMITED (Respondent).

BEFORE: R. A. Furness, Vice-Chairman, and Board Members H. J. F. Ade and E. Boyer.

APPEARANCES AT THE HEARING: F. Manoni for the applicant; Richard Baldwin, Tom Barber and David Parkes for the respondent.

DECISION OF THE BOARD: March 29, 1974.

1. The Board finds that the applicant is a trade union within the meaning of section 1(1)(n) of The Labour Relations Act.
2. The Board further finds that this is an application for certification within the meaning of section 108 of The Labour Relations Act.
3. The Board has considered the Report of the Examiner dated February 6, 1974, and the representations of the parties thereon.
4. This is an application for certification for a bargaining unit of construction labourers in the Board's regular geographic area #15. The parties are apart on the inclusion or the exclusion from the bargaining unit of the labourers employed by the respondent in its precast concrete vault manufacturing plant (hereinafter referred to as the "plant"). The respondent maintained that the labourers employed at its plant ought to be included in the appropriate bargaining unit and the applicant sought the exclusion of such labourers from the proposed bargaining unit. The parties were also apart on the inclusion or the exclusion from the proposed bargaining unit of certain persons classified by the respondent as foremen. The respondent sought the inclusion of such foremen in the bargaining unit while the applicant, characterizing such foremen as non-working foremen, sought their exclusion from the proposed bargaining unit.
5. The Report of the Examiner establishes that the labourers employed at the plant only rarely, uncommonly and briefly are employed on construction sites and that only rarely, uncommonly and briefly are the respondent's construction labourers moved from construction

sites to work in the plant. Such changes in the location of the labourers' and construction labourers' work have occurred when there has been a shortage of work in either the plant or on construction work where the employees concerned are normally employed. Moreover, where replacements are required, they are usually hired through Canada Manpower or the respondent advertizes in the local press.

6. Having regard to the evidence before it and to the representations of the parties, the Board finds that the labourers at the plant are not commonly associated in their work with on-site employees within the meaning of section 106(b) of The Labour Relations Act. The Board notes that there were no representations before it concerning whether or not the labourers at the plant were commonly associated in their bargaining with on-site employees. In the light of the foregoing, the labourers at the plant are not appropriate for inclusion in the proposed bargaining unit.

7. The Report of the Examiner discloses that the foremen, whose duties and responsibilities are under consideration, usually have a crew of five men under their direction, consisting of one pipe layer and four construction labourers. The foreman of such a crew assigns work to each member of his crew, supervises the pipelaying, directs the gravel and sand-fill trucks and sets up batter boards or grade lines for the shovel operator to follow. He ensures that there is enough sand and gravel and other materials on the job-site, directs the back fill operations after the pipe has been laid and reports his activities daily to the respondent's superintendent.

8. While the foreman does not hire new employees, he recommends persons to be hired and the respondent has acted upon such recommendations. He does not have authority to set wage rates or classifications. When the work of the men under his direction is not being performed to his satisfaction, he has the authority to sent them back to the respondent's office. However, he does not have the authority to otherwise discipline the men under his direction. The foreman has the authority to work and authorize overtime for his crew at a pipe-laying site. In addition, he makes out daily reports on the progress of the job on hand and no other person from the respondent inspects the site after he has completed his responsibilities. The foreman has the authority to purchase small tools and material and is reimbursed for his expenditures by the respondent. There is no evidence before the Board respecting any financial limitation placed on the foreman in the exercise of his discretion to purchase such small tools and materials.

9. The foreman spends about an hour of each day in the trench either checking out the pipe which has been laid or working out problems which have occurred. He is required to read and follow

the blueprints given to him by the respondent for each contract and does not perform the work of a construction labourer although, if necessary, he will show his crew how to do their jobs. After his men become familiar with their duties, he has only to supervise them. If a problem arises on the job-site, he will use his own judgment to resolve the problem. However, if he is unable to resolve the problem, he will consult the superintendent.

10. In our view, the foremen under consideration are properly classified as non-working foremen. These foremen supervise the work of their crews. On the evidence before the Board, they exercise independent discretion in areas such as the purchase of small tools and materials, the sending back to the respondent's office of men who do not perform their work satisfactorily, the working and authorization of overtime at a pipelaying site and the resolutions of problems at the job-site.

11. We find that these non-working foremen exercise a sufficient degree of independent discretion so as to cause the Board to find that they exercise managerial functions within the meaning of section 1(3)(b) of The Labour Relations Act. Accordingly, such non-working foremen are not included in the bargaining unit.

12. The Board further finds that all construction labourers in the employ of the respondent in the Regional Municipality of Ottawa - Carleton and the United Counties of Prescott and Russell, save and except non-working foremen and persons above the rank of non-working foreman, constitute a unit of employees of the respondent appropriate for collective bargaining.

13. For the purposes of the count, there were twenty-five persons in the bargaining unit on the date of the making of this application and the applicant filed evidence of membership of the type indicated at the hearing on behalf of twenty of these twenty-five persons.

14. The Board is satisfied on the basis of all the evidence before it that more than sixty-five per cent of the employees of the respondent in the bargaining unit, at the time the application was made, were members of the applicant on November 27, 1973, the terminal date fixed for this application and the date which the Board determines, under section 92(2)(j) of The Labour Relations Act, to be the time for the purpose of ascertaining membership under section 7(1) of the said Act.

15. A certificate will issue to the applicant.

2950-72-U: CSAO National (Inc.) (Complainant) v. OTTAWA GENERAL HOSPITAL (Respondent).

BEFORE: G. W. Reed, Q.C., Chairman, and Board Members H.J.F. Ade and E. Boyer.

APPEARANCES AT THE HEARING: S. T. Goudge and T. O'Dell for the applicant; and K. Billings for the respondent.

DECISION OF THE BOARD: March 29, 1974.

1. In this complaint, made under section 79 of the Labour Relations Act, a question arose as to whether the complainant was an employee under the Act or was a person excluded by the provisions of section 1(3)(b). In an earlier decision dated February 12, 1973 the Board ruled that if the complainant was excluded by section 1(3)(b), then he could not avail himself of section 79. This has been the consistent interpretation given section 79 since the Associated Medical Services Ltd. case, 64 CLLC ¶ 15,511 (S.C. of C.). Accordingly, the Board appointed an Examiner to inquire into the duties and responsibilities of the complainant in his services with the respondent.

2. It should perhaps be noted at this time that the complainant was discharged by the respondent on December 17, 1972 and it is alleged that the discharge was contrary to sections 58 and 61 of the Labour Relations Act.

3. Following the appointment of the Examiner the complainant requested the Board to reconsider its decision of February 12, 1973 in which it held that Section 79 was not available to a person who was not an employee under the Labour Relations Act. A hearing was held in due course to consider this request at which time counsel for the complainant and the respondent had full opportunity to make their submissions. In brief, it is the submission of counsel for the complainant that section 80 of the Labour Relations Act has "reversed" the Associated Medical Services case with respect to the meaning of the word "person" in section 79 and "by dicta" the meaning of the word "person" in section 58. Counsel for the respondent argues that section 80 has a much more restricted meaning and that the Board's original decision was correct. We shall return to these submissions after briefly reviewing the Associated Medical Services case.

4. In that case a complaint was filed with the Board under the provisions of section 65 (now section 79) of the Labour Relations Act, alleging that the complainant had been discharged for trade union activity contrary to section 50 (now section 58) of the Act. The Board found that the complainant at all material times exercised managerial functions within the meaning of section 1(3)(b) of the Act but that she was nevertheless a "person" within the meaning of

that word as used in sections 50 and 65 of the Act. Accordingly, having found that the complainant was discharged for trade union activity, the Board held that this was in violation of section 50 and the complainant was entitled to relief under section 65 and ordered her reinstatement.

5. The respondent employer challenged the Board's determination by way of an order in lieu of certiorari and the applications was dismissed by Parker J. The Court of Appeal unanimously reversed this decision, holding that the word "person" in both section 50 and section 65 meant an "employee" and did not include a person exercising managerial functions within the meaning of section 1(3)(b) of the Act which provided that such a person was deemed not to be an employee for purposes of the Act. An appeal to the Supreme Court of Canada from the decision of the Court of Appeal was dismissed. Cartwright J. adopted the reasoning of the Ontario Court of Appeal and his reasons were concurred in by Taschereau C.J.C., Fauteux, Martland and Hall JJ. Ritchie J. agreed with Cartwright J. and the Ontario Court of Appeal but gave additional reasons for dismissing the appeal. Judson, Abbott and Spence JJ. dissented. It seems clear, therefore, that a majority of the judges in the Supreme Court agreed with the reasoning of Aylesworth J.A. who delivered the judgment in the Ontario Court of Appeal.

6. As noted above, it is the submission of counsel for the complainant that section 80 of the present Act has "reversed" the Associated Medical Services case with respect to the meaning of the word "person" in section 79 (formerly section 65) of the Labour Relations Act and "by dicta" the meaning of the same word in section 58 (formerly section 50). Section 80 provides as follows:

80. For the purposes of section 71 and any complaint made under section 79, "person" includes any person otherwise excluded by subsection 3 of section 1.

Subsection (3) of section 1 reads as follows:

1.-(3) Subject to section 80, for the purposes of this Act, no person shall be deemed to be an employee,

(a) who is a member of the architectural, dental, land surveying, legal or medical profession entitled to practice in Ontario and employed in a professional capacity;
or

- (b) who, in the opinion of the Board, exercises managerial functions or is employed in a confidential capacity in matters relating to labour relations.

Section 71 provides as follows:

71.-(1) No employer, employers' organization or person acting on behalf of an employer or employers' organization shall,

- (a) refuse to employ or continue to employ a person;
- (b) threaten dismissal or otherwise threaten a person;
- (c) discriminate against a person in regard to employment or a term or condition of employment; or
- (d) intimidate or coerce or impose a pecuniary or other penalty on a person,

because of a belief that he may testify in a proceeding under this Act or because he has made or is about to make a disclosure that may be required of him in a proceeding under this Act or because he has made an application or filed a complaint under this Act or because he has participated or is about to participate in a proceeding under this Act.

(2) No trade union, council of trade unions or person acting on behalf of a trade union or council of trade unions shall,

- (a) discriminate against a person in regard to employment or a term or condition of employment; or
- (b) intimidate or coerce or impose a pecuniary or other penalty on a person,

because of a belief that he may testify in a proceeding under this Act or because he has made or is about to make a disclosure that may be required of him in a proceeding under this Act or because he has made an application or filed a complaint under this Act or

because he has participated or is about to participate in a proceeding under this Act.

7. Assuming for the moment that counsel's argument is correct with respect to section 79, we are unable to agree that section 80 has any effect on the word "person" as used in section 58. It was counsel's contention that the interpretation placed on the word "person" in section 58 in the Reasons for Judgment of Aylesworth J.A., which reasons were adopted by the majority of the learned justices of the Supreme Court of Canada was "dicta" only and therefore not necessary for the decision. It was his further submission that if the meaning of the word "person" in section 79 has been changed in a general fashion by section 80 to include a person who exercises managerial functions, then the word "person" in section 58 should be similarly construed. We find it difficult to accept the proposition that the interpretation placed on the word "person" in section 58 in the Associated Medical Services case was dicta only, but even if it was, it constitutes a very powerful expression of judicial opinion and one which this Board has in the past followed and should continue to do so. We therefore start off with the proposition that prior to the enactment of section 80 the word "person" in section 58 did not include a person who exercised managerial functions. That being the case, we are unable to see how changing the meaning of the word "person" in section 71 and, assuming counsel is correct, the general meaning of that word in section 79, can change the meaning in section 58. If counsel is correct in his submission it would follow that the word "person" in other sections of the Act would have to be given a similar meaning. This to us appears to be a very strange method of amending an Act. In our view, if the Legislature had intended to change the meaning of the word "person" in section 58 and other sections, it would have expressed its intention in much clearer language than appears in section 80. Accordingly, we reject this aspect of counsel's argument and find that the word "person" in section 58 does not include a person who in the opinion of the Board exercises managerial functions.

8. Counsel for the complainant next submitted that if the Board should find that the meaning of the word "person" in section 58 was not changed, nevertheless the meaning of the word "person" in section 79 was changed so that if a person exercising managerial functions was dealt with contrary to some provision of the Act, for example, section 61, a remedy was now available to such person under section 79. To better understand this argument, it is helpful to begin by setting out the argument of counsel for the respondent. It was his submission that under the Associated Medical Services case, the word "person" in section 71 would not have included persons excluded by section 1(3). He argued that all that section 80 intended to accomplish was to change the meaning of the word "person" in section

71 to include persons formerly excluded by section 1(3) and at the same time given such persons a remedy under section 79. He stressed the fact that section 71 differs from other unfair labour practice sections in that it deals with conduct designed to thwart the processes of the Board and it was therefore important that the section protect all persons, whether exercising managerial functions or not. The addition of section 80 was designed to deal with this one situation and it was not intended to open up section 79 as a remedy for persons excluded by section 1(3) vis-a-vis sections other than section 71. Had that been the intention, it would have been simpler to avoid any reference to section 71. In order to give meaning to the words "For the purposes of section 71" in section 80, the restricted interpretation of section 80 should be adopted.

9. Counsel for the complainant argues that the plain meaning of the words in section 80 requires a wider interpretation than that put forward by counsel for the respondent. While this argument was made with respect to his contention that section 80 has reversed the meaning of the word "person" in both sections 58 and 79 of the Act, the argument applies equally to the narrower issue we are now considering. Basically, counsel relies on the "plain meaning of the statute". He first points to the word "purposes" in the opening words of the section: "For the purposes of section 71". It was his submission that the use of the plural in the word "purposes" indicates that the amendment was intended to cover all proceedings arising out of a breach of section 71 as well as all complaints under section 79. It was further argued that this is supported by the use of the word "any" instead of "a" before the word "complaint" in the final line of section 80, thus, "For the purposes of section 71 and 'any' complaint under section 79..." In counsel's view the use of the words "purposes" and "any" signifies an intention to refer to all complaints under section 79, whether arising from a breach of section 71 or some other section of the Act. If the meaning to be given the word "person" in section 71 had been intended to be confined to a complaint filed under section 79 arising only out of a breach of section 71, section 80 would have read "For the purpose of section 71 a complaint under section 79..." In further support of his contention, counsel also points to the fact that section 80 follows section 79. If the narrower interpretation had been intended, it would have been more logical to put the section after section 71. Since it follows section 79, it must be construed to apply to "the whole set of procedures under section 79". Based on these arguments, counsel therefore submits that since the original complaint alleges a breach of section 61 of the Act and since section 61 applies to persons rather than to employees, a remedy now lies under section 79 where a person, who is not necessarily an employee, has been dealt with contrary to section 61.

10. The argument of counsel for the respondent, that if it had

been the intention to open up section 79 as a remedy for persons excluded by section 1(3) vis-a-vis sections other than section 71, it would have been simpler to avoid any reference in section 80 to section 71, does not, in our view, stand up. Without a reference to section 71 there would still have been great doubt, based on the reasoning in the Associated Medical Services case as to whether persons excluded by section 1(3) of the Act were intended to be covered by that section, and if it were held that they were not, the fact that they were now covered by section 79 would not assist them because they would still not be dealt with contrary to section 71. Thus, to ensure that protection for such persons, it was necessary to include a reference to section 71 in section 80.

11. The question therefore appears to be whether section 80, as written, provides a remedy under section 79 only for a breach of section 71 or whether it provides a remedy not only for a breach of section 71 but for a breach of other sections of the Act which, like section 71, apply to persons not excluded by section 1(3). In support of the narrower interpretation counsel for the respondent relies on the fact that section 71 differs from other unfair labour practice sections in that it deals with conduct designed to thwart the processes of the Board and it was therefore important that the section protect all persons, whether or not otherwise excluded by section 1(3). On the other hand, if the section is capable of bearing the interpretation argued by counsel for the complainant, it would be just as logical to give it the broader rather than the narrower interpretation on the ground that if the Legislature, having extended the coverage of section 79 to cover for the first time some persons formerly excluded by section 1(3), that is, those brought under the protection of section 71, it intended also to extend the coverage of section 79 to persons protected by other sections of the Act, for example, those covered by section 61, but unable to use section 79 as a remedy because of the decision in the Associated Medical Services case.

12. Is section 80 capable of bearing the interpretation argued for by counsel for the complainant? His arguments with respect to the use of the word "purposes" instead of "purpose", the use of the word "any" instead of "a" and the juxtaposition of sections 79 and 80, all as more fully spelled out in paragraph 9 above, are persuasive and, in our view, were not successfully countered in the argument of counsel for respondent. While we concede that an argument might be made (and it was not so made at the hearing) that the word "purposes" in section 80 was used because section 71 contains a number of different offences, and that similarly, the word "any" was used in section 80 because a number of different complaints could be filed under section 79 in relation to section 71, this appears to us to be placing a somewhat strained interpretation on the section because, in our view, the

same result would have followed if the word "purpose" and the word "a" had been used.

13. In the result, therefore, we hold that while section 80 cannot be construed to change the meaning of the word "person" in section 58 and other sections of the Act (except sections 71 and 79 as outlined above) it does provide a remedy through section 79 for persons otherwise excluded by the provisions of section 1(3) if such persons are already covered by some other provision of the Act.

14. Therefore, in so far as this request for reconsideration of the Board's decision of February 12, 1973 is based on counsel's argument with respect to section 58, the Board confirms its decision that the complainant, if excluded by section 1(3)(b), could not avail himself of Section 79. However, in so far as the complaint is based on the respondent allegedly acting contrary to section 61, section 79 may be available to the complainant even if he falls under section 1(3)(b). We use the word "may" because, although it has been assumed throughout these reasons (and in argument before the Board) that the word "person" in section 61 is not restricted to "employee" we cannot recall a case where this Board has been called on to deal with that question. We are not therefore precluding an argument on this point being made to the Board in subsequent proceedings in this complaint. Thus, any decision at this time to modify our earlier decision in so far as it relates to section 61 would be premature.

15. There remains for consideration the future course of these proceedings in the light of our decision herein. It is the position of the complainant that he is not a person excluded by the provisions of section 1(3)(b) of the Labour Relations Act while the respondent takes the position that the complainant does exercise managerial functions within the meaning of the said section. As noted earlier in these reasons, the Board appointed an Examiner to inquire into the duties and responsibilities of the complainant and the Examiner's inquiry has been completed and his report has been issued. The respondent notified the Board that it wished to make representations at a hearing before the Board with respect to the conclusions that the Board should draw from the Examiner's report. Accordingly, the Registrar is directed to list this matter for hearing in order to enable the parties to make representations to the Board with respect to the report of the Examiner dated August 2, 1973. At that hearing the Board will also consider such representations as the parties may wish to make with respect to whether section 61 of the Labour Relations Act applies to persons other than employees covered by the Act.

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4881-73-M: Man of Aran Ltd. (Employer) v. Local 280 of the International Beverage Dispensers' & Bartenders' Union of the Hotel and Restaurant Employees and Bartenders' International Union, A.F. of L., C.I.O., C.L.C. (Trade Union). (AFFIRMATIVE).

(1974) 2 OLRB M.R. - PAGE 87.

4893-73-M: Cooksville Steel Limited (Employer) v. International Association of Bridge, Structural and Ornamental Ironworkers, Local Union No. 721 Affiliated with the AFL-CIO (Trade Union). (DISMISSED).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

4532-73-R: Labourers' International Union of North America, Local 837 (Applicant) v. Bono General Construction Limited (Respondent) v. Group of Employees (Objectors). (REQUEST DENIED).

4751-73-R: United Paperworkers International Union (Applicant) v. Wilson-Munroe Company Ltd. (Respondent) v. Group of Employees (Objectors). (REQUEST DENIED).

4791-73-R: Canadian Union of Public Employees (Applicant) v. Plummer Memorial Public Hospital (Sault Algoma Ambulance Service) (Respondent) v. Service Employees International Union, Local 268 (Intervener). (REQUEST DENIED).

4854-73-R: Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local 647 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Canadian Food Products Sales Limited (Respondent). (REQUEST DENIED).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 95(2)

4735-73-M: United Steelworkers of America (Applicant) v. The W. S. Tyler Company of Canada Limited (Respondent). (REQUEST DENIED).

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING MARCH

BARGAINING AGENTS CERTIFIED DURING MARCH

No Vote Conducted

2865-72-R: Kitchener-Waterloo Construction Association (Applicant) v. Labourers' International Union of North America, Local 1081 (Respondent) v. Electrical Power Systems Construction Association (Intervener).

Unit: "all employers of labourers for whom the respondent has bargaining rights in the Counties of Waterloo, Wellington, Dufferin, Grey, Brant and Norfolk in the industrial, commercial and institutional sector of the construction industry." (no employees in the unit).
(HAVING CONSIDERED THE REPRESENTATIONS OF THE PARTIES).

(1974) 2 OLRB M.R. - PAGE 139.

3175-72-R: Electrical Contractors Association of London (Applicant) v. The International Brotherhood of Electrical Workers, Local Union 120 (Respondent) v. Electrical Power Systems Construction Association (Intervener).

Unit: "all employers of journeymen electricians and apprentices for whom the respondent has bargaining rights in the Counties of Oxford, Huron, Middlesex and Elgin in the industrial, commercial and institutional sector and the residential sector of the construction industry." (no employees in the unit).

3853-73-R: The Roofing Division of the Toronto Sheet Metal and Air Handling Group (Applicant) v. The Built-Up Roofers' Damp and Waterproofers' Section of the Sheet Metal Workers' International Association Local Union #30 (Respondent) v. Electrical Power Systems Construction Association (Intervener).

Unit: "all employers of roofers and roofers' labourers for whom the respondent has bargaining rights in Halton County with the exception of the west side of Oakville Creek in Trafalgar Township; Nelson and Nassawageya Townships; Peel County; Erin Township in Wellington County; Dufferin County; Simcoe County; Metropolitan Toronto; York County; County Ontario; the Townships of Cartwright and Darlington in Durham County; District of Muskoka and the Townships of Carling, Ferguson, McDougall, McKellar, Christie, Foly, Conger and Humphries in the District of Parry Sound in the Province of Ontario in the industrial, commercial and institutional sectors of the construction industry."

(no employees in the unit). (HAVING CONSIDERED THE REPRESENTATIONS OF THE PARTIES).

4160-73-R: Canadian Automatic Sprinkler Association (Applicant) v. United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 787 (Respondent).

Unit: "all employers of journeymen sprinkler fitters and their apprentices for whom the respondent has bargaining rights in the Province of Ontario in the industrial, commercial and institutional sector, the residential sector, the sewers, tunnels and watermains sectors and the heavy engineering sector of the construction industry." (no employees in the unit).

4528-73-R: Teamsters, Chauffeurs, Warehousemen and Helpers, Local 91, Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Universal Terminals Ltd. (Respondent).

Unit #1: "all drivers exclusively engaged by the respondent in its "trains" operations, save and except foremen and dispatchers and persons above the rank of foreman and dispatcher." (6 employees in the unit). (HAVING REGARD TO THESE PARTICULAR CIRCUMSTANCES).

(BARGAINING UNIT #2 - SEE CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE).

4667-73-R: Canadian Food and Allied Workers Local Union 725, Chartered by The Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC (Applicant) v. Sayvette Limited (Respondent) v. Group of Employees (Objectors).

Unit #2: "all employees of the respondent at its central marking and distribution warehouse in Metropolitan Toronto, save and except supervisors, persons above the rank of supervisor, head office staff and retail store employees." (80 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (...THE BOARD NOTES THAT THE APPLICANT WITHDRAWS ANY CHARGES MADE IN CONNECTION WITH THIS APPLICATION FOR CERTIFICATION).

(BARGAINING UNIT #1 - SEE APPLICATION CERTIFIED SUBSEQUENT TO POST-HEARING VOTE).

4774-73-R: Labourers' International Union of North America, Local 527 (Applicant) v. Taggart Construction Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent in

the Regional Municipality of Ottawa - Carleton and the United Counties of Prescott and Russell, save and except non-working foremen and persons above the rank of non-working foreman." (46 employees in the unit). (FOR THE PURPOSES OF THE COUNT, THERE WERE TWENTY-FIVE PERSONS IN THE BARGAINING UNIT ON THE DATE OF THE MAKING OF THIS APPLICATION AND THE APPLICANT FILED EVIDENCE OF MEMBERSHIP OF THE TYPE INDICATED AT THE HEARING ON BEHALF OF TWENTY OF THESE TWENTY-FIVE PERSONS.).

(1974) 2 OLRB M.R. - PAGE 190.

4801-73-R: Canadian Union of Public Employees (Applicant) v. The Corporation of the Township of Woodhouse (Respondent).

Unit: "all office, clerical and technical employees of the respondent at the Township of Woodhouse, save and except Clerk Treasurer and persons above the rank of Clerk Treasurer, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (3 employees in the unit).

(1974) 2 OLRB M.R. - PAGE 129.

4855-73-R: Canadian Union of Public Employees (Applicant) v. The Corporation of the United Counties of Stormont, Dundas and Glengarry (Respondent) v. Group of Employees (Objectors).

Unit: "all roads department employees of the respondent, save and except foremen, persons above the rank of foreman, and students employed during the school vacation period." (45 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR PURPOSES OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE SURVEY PARTY CHIEF IS EXCLUDED FROM THE BARGAINING UNIT AS THIS PERSON EXERCISES MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT.) (FOR PURPOSES OF CLARITY THE BOARD FURTHER NOTES THE AGREEMENT OF THE PARTIES THAT PERSONS CLASSIFIED AS SUB-FOREMEN SHALL BE INCLUDED IN THE BARGAINING UNIT AS THESE PERSONS ARE EMPLOYEES AND DO NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT.).

4921-73-R: Canadian Food and Allied Workers Local Union 725, Chartered by The Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC (Applicant) v. Cardinal Distributors Limited (Respondent).

Unit: "all employees of the respondent at Ajax, save and except manager and persons above the rank of manager." (13 employees in the unit).

4948-73-R: Service Employees Union, Local 204, Affiliated with Service Employees International Union, AFL-CIO-CLC (Applicant) v. Waldheim Nursing Home Limited, carrying on business as Birchcliff Nursing Home (Respondent).

Unit #1: "all employees of the respondent in Metropolitan Toronto, save and except supervisors, persons above the rank of supervisor, registered nurses, office staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (22 employees in the unit).

(BARGAINING UNIT #2 - SEE APPLICATION CERTIFIED SUBSEQUENT TO POST-HEARING VOTE).

5017-73-R: International Brotherhood of Electrical Workers, Local Union 773 (Applicant) v. The Tilbury Public Utilities Commission (Respondent).

Unit: "all employees of the respondent, save and except assistant general manager, persons above the rank of assistant general manager, office and sales staff, persons regularly employed for not more than twenty-four hours per week, and students employed during the school vacation period." (7 employees in the unit).

5018-73-R: International Brotherhood of Electrical Workers Local Union 773 (Applicant) v. The Tilbury Public Utilities Commission (Respondent).

Unit: "all office and clerical employees of the respondent at Tilbury, Ontario, save and except general manager, persons above the rank of general manager and persons regularly employed for not more than twenty-four hours per week." (3 employees in the unit).

5082-73-R: International Union of Operating Engineers, Local 772 (Applicant) v. Domtar Chemicals Limited (Sifto Salt Division) (Respondent).

Unit #1: "all office and clerical employees of the respondent at the North Dock in Goderich save and except supervisors, persons above the rank of supervisor, sales staff, secretary to the Mine Manager, students engaged in a co-operative university program and students employed during the school vacation period." (6 employees in the unit). (HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES). (FOR THE PURPOSE OF CLARITY, THE BOARD NOTED THE AGREEMENT OF THE PARTIES TO THE EFFECT THAT PROFESSIONAL ENGINEERS INCLUDING ENGINEERS IN TRAINING ARE NOT INCLUDED IN BARGAINING UNIT #1.).

(BARGAINING UNIT #2 - SEE CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE).

5103-73-R: International Association of Bridge, Structural & Ornamental Ironworkers, Local 759 (Applicant) v. Dineen Roads and Bridges Limited (Respondent).

Unit: "all reinforcing rodmen in the employ of the respondent in the District of Kenora, including the Patricia Portion, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

(1974) 2 OLRB M.R. - PAGE 164.

5111-73-R: Central Ontario District Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Alliance Building Corporation Limited (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the County of Simcoe, the District of Muskoka and the Townships of Rama, Mara and Thorah in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

5120-73-R: The Workers Union of Dumont Press Graphix (C.N.T.U.) (Applicant) v. Dumont Press Graphix Limited (Respondent).

Unit: "all employees of the respondent at Kitchener, save and except supervisors and persons above the rank of supervisor." (15 employees in the unit).

5133-73-R: The Carpenters' District of Council of Toronto and vicinity on behalf of Locals #27; #666; #681; #1133; #1963; #3227, and #3233 of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. E. J. Wright Central Ltd. (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit).

5154-73-R: Nurses' Association Leamington District Memorial Hospital (Applicant) v. Leamington District Memorial Hospital (Respondent).

Unit: "all registered and graduate nurses employed by the respondent at Leamington, save and except head nurse and persons above the rank of head nurse." (92 employees in the unit). (FOR PURPOSES OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT REGISTERED AND GRADUATE NURSES REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK ARE INCLUDED IN THE APPROPRIATE UNIT.).

5157-73-R: United Glass & Ceramic Workers of North America, AFL-CIO-CLC (Applicant) v. Unit Farm Concrete Products Ltd. (Respondent).

Unit: "all employees of the respondent at Woodstock, save and except foremen, persons above the rank of foreman, office and sales staff, persons regularly employed for not more than twenty-four hours per week, and students employed during the school vacation period." (9 employees in the unit).

5176-73-R: Building Service Employees International Union Local 478, Affiliated with A. F. of L., C.I.O. (Applicant) v. Kirkland and District Hospital (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at Kirkland Lake, Ontario, save and except department heads, persons above the rank of department head, professional medical staff, graduate and undergraduate nurses, graduate and under graduate pharmacists, graduate and student dietitians, technical personnel, office staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (130 employees in the unit). (ON AGREEMENT OF THE PARTIES).

5177-73-R: Canadian Union of Operating Engineers (Applicant) v. Dominion Cellulose Limited (Respondent).

Unit: "all stationary engineers and persons primarily engaged as their helpers employed by Dominion Cellulose Limited at its plant in Metropolitan Toronto, save and except the assistant Chief Engineer and persons above the rank of assistant Chief Engineer." (4 employees in the unit).

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5184-73-R: Warehousemen & Miscellaneous Drivers Local 419 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. G. W. Ramm Co. Ltd. (Respondent).

Unit: "all employees of the respondent working at and out of Mississauga, save and except foremen and dispatchers, persons above the rank of foreman and dispatcher, office and sales staff." (12 employees in the unit).

5214-73-R: Teamsters Local 879 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Cayuga Materials & Construction Co. Limited (Respondent).

Unit: "all employees of the respondent at Caledonia, save and except dispatchers, foremen, persons above the rank of dispatcher and foreman, office and sales staff." (5 employees in the unit).

5219-73-R: Toronto Newspaper Guild, Local 87 of the Newspaper Guild (Applicant) v. The Toronto Citizen (Respondent).

Unit: "all employees of the respondent in the Municipality of Metropolitan Toronto, save and except editor-publisher and persons above the rank of editor-publisher." (29 employees in the unit).

5228-73-R: The International Brotherhood of Electrical Workers, Local 804 (Applicant) v. Keller Electric Limited (Respondent) v. Group of Employees (Objectors).

Unit #1: "all electricians and electricians' apprentices in the employ of the respondent in the Regional Municipality of Waterloo except part of Beverly Township annexed by North Dumfries Township, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

Unit #2: "all electricians and electricians' apprentices in the employ of the respondent in the County of Dufferin, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

5233-73-R: Canadian Union of Public Employees (Applicant) v. The Corporation of the Township of Rainham (Respondent).

Unit: "all employees of the respondent, save and except superintendents, persons above the rank of superintendent, office staff and persons regularly employed for not more than 24 hours per week." (3 employees in the unit).

5235-73-R: Canadian Union of Public Employees (Applicant) v. Waterford Public Utilities Commission (Respondent).

Unit: "all employees of the respondent at Waterford, save and except manager, persons above the rank of manager and office staff." (3 employees in the unit).

5236-73-R: Canadian Union of Public Employees (Applicant) v. Big Brother Movement of Toronto (Respondent).

Unit: "all social workers employed by the respondent in the Municipality of Metropolitan Toronto, save and except the Director of Professional Services, the Executive Director, the Director of Publicity and Recruitment, office and clerical staff, persons regularly employed for not more than 24 hours per week, and students employed during the school vacation period." (8 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5242-73-R: Labourers' International Union of North America, Local 527 (Applicant) v. Marion Construction Inc. (Respondent).

Unit: "all construction labourers in the employ of the respondent in the Regional Municipality of Ottawa - Carleton and the United Counties of Prescott and Russell, save and except non-working foremen and persons above the rank of non-working foreman." (15 employees in the unit).

5243-73-R: Sheet Metal Workers' International Association Local Union 537 (Applicant) v. Brown - Jarvis Roofing Company (Respondent).

Unit: "all employees of the respondent engaged in roofing in the Regional Municipality of Niagara and the County of Haldimand, save and except non-working foremen and persons above the rank of non-working foreman." (7 employees in the unit).

5246-73-R: The Canadian Union of Public Employees (Applicant) v. City of Timmins Home for the Aged, Golden Manor (Respondent).

Unit: "all employees of the respondent, save and except professional medical staff, graduate nursing staff, undergraduate nurses, graduate pharmacists, undergraduate pharmacists, graduate dietitians, student dietitians, technical personnel, supervisors, persons above the rank of supervisor, adjuvant supervisors, office staff and employees covered by the bargaining unit described in the collective agreement made between the parties effective June 1, 1972." (29 employees in the unit). (FOR THE PURPOSES OF CLARITY, THE BOARD NOTED THAT THE ABOVE UNIT IS WHAT IS REFERRED TO AS A "TAG-END" UNIT AND INCLUDES TEMPORARY AND CASUAL EMPLOYEES, STUDENTS AND ANY EMPLOYEES THAT MAY BE REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK.).

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5250-73-R: International Ladies Garment Workers Union (Applicant) v. Jac-An Juniors Limited (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except foremen, foreladies, persons above the rank of foreman and forelady." (39 employees in the unit).

5252-73-R: Retail, Wholesale and Department Store Union, AFL:CIO:CLC (Applicant) v. Hostess Food Products Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at Sudbury, save and except supervisors, persons above the rank of supervisor and students employed during the school vacation period." (9 employees in the unit). (HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES).

5262-73-R: United Steelworkers of America (Applicant) v. Argue Fuels, Division of Turbex Ltd. (Respondent).

Unit: "all employees of the respondent at Ottawa, employed as oil burner servicemen, save and except foremen, persons above the rank of foreman, office and sales staff, dispatcher and truck drivers who are not engaged as oil burner servicemen." (5 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5263-73-R: United Steelworkers of America (Applicant) v. Hopewell - Ballantyne Fuels (Respondent).

Unit: "all employees of the respondent at Ottawa, employed as oil burner servicemen, save and except foremen, persons above the rank of foreman, office and sales staff and truck drivers who are not engaged as oil burner servicemen." (2 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5266-73-R: Labourers' International Union of North America, Local 527 (Applicant) v. Gérard Lafleur (Respondent).

Unit: "all construction labourers in the employ of the respondent in the Regional Municipality of Ottawa - Carleton and the United Counties of Prescott and Russell, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

5270-73-R: Labourers' International Union of North America, Local 607 (Applicant) v. Fraser-Brace Engineering Company Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent in the District of Thunder Bay, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

5273-73-R: London and District Building Service Worker's Union, Local 220, S.E.I.U. - A.F. of L. - C.I.O. - C.L.C. (Applicant) v. The Corporation of the City of St. Thomas (Respondent).

Unit: "all employees of the respondent at the Valleyview Home for the Aged at St. Thomas, who are regularly employed for not more than 24 hours per week and students employed during the school vacation period, save and except supervisors, persons above the rank of supervisor, registered nurses and office staff." (8 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5275-73-R: Hotel & Restaurant Employees & Bartenders International Union, Local 756 (Applicant) v. Local No. 199 U.A.W. Building Corporation (Respondent).

Unit: "all employees of the respondent at St. Catharines, save and except manager and persons above the rank of manager." (8 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5280-73-R: International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local #704 (Applicant) v. Atlas Alloys, A Division of Rio Algom Mines Limited (Respondent).

Unit: "all warehousing employees of the respondent at Windsor, Ontario, save and except foremen, persons above the rank of foreman, office and sales staff and students employed during the school vacation period." (5 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). FOR PURPOSES OF CLARITY THE BOARD NOTED THAT THE RESPONDENT HAS NOT EMPLOYED PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK ON THE DATE OF MAKING THE INSTANT APPLICATION NOR WAS THERE A PAST HISTORY OF EMPLOYING THIS CLASSIFICATION OF EMPLOYEE. (SEE; WILSON-MUNROE COMPANY LTD. CASE OLRB M.R. DECEMBER 1973 647 at p648).).

5281-73-R: International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local #128 (Applicant) v. Research-Cottrell (Canada) Ltd. (Respondent).

Unit: "all employees of the respondent company at Richmond Hill, Ontario, save and except foremen, persons above the rank of foreman and office staff." (15 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5282-73-R: United Cement, Lime and Gypsum Workers International Union, A.F.L. C.I.O. C.L.C. (Applicant) v. Sivaco Ontario Ltd. (Respondent).

Unit: "all employees of the respondent at Ingersoll, save and except foremen, persons above the rank of foreman, office and sales staff, students employed during the school vacation period and persons regularly employed for not more than twenty-four hours per week." (64 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5284-73-R: Carpenters' District Council of Toronto and vicinity on behalf of Local Unions 27, 666, 681, 1133, 1963, 3227, and 3233 (Applicant) v. Ontario Glass Craftsmen (Niagara) Limited (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit).

5289-73-R: The Civil Service Association of Ontario (Inc.) (Applicant) v. Port Colborne Ambulance Service Centre (Respondent).

Unit: "all employees of the respondent at Port Colborne engaged in Ambulance Service operations save and except Supervisors and persons above the rank of Supervisor." (13 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5290-73-R: The Civil Service Association of Ontario (Inc.) (Applicant) v. Fleuty Funeral Home Ltd. operating Fleuty Ambulance Service (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto engaged in ambulance service operations, save and except supervisors and persons above the rank of supervisor." (12 employees in the unit).

5299-73-R: The Bricklayer's Masons and Plasterers International Union of America, Local #10 (Applicant) v. Dodge Construction Company Limited (Respondent).

Unit: "all bricklayers and bricklayers' apprentices, stonemasons and stonemasons' apprentices in the employ of the respondent in the Townships of Elizabethtown, Augusta, and Edwardsburgh and all lands south thereof (there are three Municipalities south of these townships: Brockville, Prescott and Cardinal) in the United Counties of Leeds and Grenville, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

5302-73-R: United Brotherhood of Carpenters and Joiners of America, Local Union 93 (Applicant) v. Marion Construction Inc. (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the Regional Municipality of Ottawa - Carleton and the United Counties of Prescott and Russell, save and except non-working foremen and persons above the rank of non-working foreman." (6 employees in the unit).

5306-73-R: International Union of Operating Engineers, Local 793 (Applicant) v. Carling Hill Construction Co. Ltd. (Respondent).

Unit: "all employees of the respondent in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (9 employees in the unit).

5307-73-R: United Steelworkers of America (Applicant) v. Conduits-Amherst Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent employed in its Conduits National Division in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office and sales staff." (55 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5313-73-R: Office & Professional Employees International Union Local 214 (Applicant) v. Sault of Ontario Credit Union Limited (Respondent).

Unit: "all employees of the respondent at Sault Ste. Marie and District, Ontario, save and except General Manager, Office Manager, Loans Manager, Member Services Supervisor and persons above those ranks." (17 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5315-73-R: The Carpenters' District Council of Toronto and Vicinity, on behalf of Locals 27, 666, 681, 1133, 1963, 3227, 3233 of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. Grant Pearson Co. Ltd. (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

5320-73-R: International Association of Bridge, Structural & Ornamental Ironworkers, Local 759 (Applicant) v. Superior Industrial Door Erectors (Respondent).

Unit: "all ironworkers in the employ of the respondent in the District of Kenora, including the Patricia Portion, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

5321-73-R: Local Union 1687 of the International Brotherhood of Electrical Workers (Applicant) v. Canadian R.P.M. Electric (Respondent).

Unit: "all electricians and electricians' apprentices in the employ of the respondent within a twenty mile radius of the North Bay post office, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

5324-73-R: Canadian Union of Public Employees (Applicant) v. Welland & District Humane Society S.P.C.A. (Respondent).

Unit: "all employees of the respondent at Welland, Ontario, save and except manager and persons above the rank of manager." (6 employees in the unit).

Applications Certified Subsequent to Pre-Hearing Vote

5129-73-R: International Woodworkers of America (Applicant) v. Thompson - Heyland Limited (Respondent).

Unit: "all employees of Thompson - Heyland Limited, Burk's Falls, Ontario, save and except foremen, persons above the rank of foreman, office and sales staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (81 employees in the unit).

Number of names of persons on voters' list	77
Number of persons who cast ballots	70
Number of ballots marked in favour of applicant	41
Number of ballots marked against applicant	29

5140-73-R: International Woodworkers of America (Applicant) v. Consolidated Bathurst Packaging Limited (Respondent) v. International Union of Operating Engineers Local 796 (Intervener #1) v. United Brotherhood of Carpenters and Joiners of America, Local Union 2914 (Intervener #2).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office and sales staff, Art Department staff, Design Department staff, Technical and Development Department staff, Industrial Engineering Department staff, the Production Schedulers, Quality Control Department staff, Cafeteria staff, persons regularly employed for not more than 24 hours per week, students employed during the school vacation period and persons covered by a subsisting collective agreement between the respondent and the International Union of Operating Engineers, Local 796." (183 employees in the unit).

Number of names of persons on revised voters' list	174
Number of persons who cast ballots	148
Number of ballots marked in favour of applicant	134
Number of ballots marked in favour of intervener #2	14

5144-73-R: Canadian Union of Public Employees (Applicant) v. Brantwood Manor Nursing Homes Limited (Respondent).

Unit: "all employees of the respondent at Burlington, Ontario, save and except professional and medical staff, graduate nursing staff, undergraduate nurses, supervisors, persons above the rank of supervisor, technical personnel, office staff and students employed during the school vacation period." (64 employees in the unit).

Number of names of persons on revised voters' list		55
Number of persons who cast ballots	49	
Ballots segregated and not counted	3	
Number of spoiled ballots	1	
Number of ballots marked in favour of applicant	27	
Number of ballots marked against applicant	18	

5245-73-R: United Steelworkers of America (Applicant) v. Eramosa Brass and Aluminum Ltd. (Respondent).

Unit: "all employees of the respondent in Guelph, save and except foremen, persons above the rank of foreman, office and sales staff, and persons regularly employed for not more than twenty-four hours per week." (26 employees in the unit).

Number of names of persons on revised voters' list		22
Number of persons who cast ballots	22	
Number of ballots marked in favour of applicant	13	
Number of ballots marked against applicant	9	

Applications Certified Subsequent to Post-Hearing Vote

4049-73-R: Nurses' Association Wellesley Hospital, Toronto (Applicant) v. The Wellesley Hospital (Respondent) v. Group of Employees (Objectors).

Unit: "all registered and graduate nurses employed by the respondent at Toronto, save and except head nurses, persons above the rank of head nurse and persons regularly employed for not more than 24 hours per week." (621 employees in the unit).

Number of names of persons on revised voters' list		384
Number of persons who cast ballots	309	
Number of spoiled ballots	2	
Number of ballots marked in favour of applicant	279	
Number of ballots marked against applicant	28	

4667-73-R: Canadian Food and Allied Workers Local Union 725, Chartered by The Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC (Applicant) v. Sayvette Limited (Respondent) v. Group of Employees (Objectors).

Unit #1: "all employees of the respondent at its retail stores in Metropolitan Toronto, save and except group managers, persons above the rank of group manager, personnel manager, security staff and head office staff." (416 employees in the unit). (...THE BOARD FURTHER NOTES THE AGREEMENT OF THE PARTIES THAT PERSONS CLASSIFIED BY THE RESPONDENT AS CASH OFFICE SUPERVISORS ARE EMPLOYEES OF THE RESPONDENT INCLUDED IN BARGAINING UNIT #1.).

Number of names of persons on revised voters' list		464
Number of persons who cast ballots	275	
Ballots segregated and not counted	3	
Number of ballots marked in favour of applicant	153	
Number of ballots marked against applicant	119	

(BARGAINING UNIT #2 - SEE BARGAINING UNITS CERTIFIED - NO VOTE CONDUCTED).

4814-73-R: Warehousemen and Miscellaneous Drivers Local 419 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Modernfold of Canada Ltd. (Respondent).
- and -

4815-73-R: Warehousemen and Miscellaneous Drivers Local 419 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Aikenhead Hardware Ltd. (Respondent).
- and -

4816-73-R: Warehousemen and Miscellaneous Drivers Local 419 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Beaver Lumber Company Limited (Respondent).

Unit: "all employees of the respondent at its warehouse, distribution and fabricating operations located at 1325 Lawrence Avenue East, Don

Mills, Ontario, save and except foremen, supervisors, dispatchers, assistant managers, persons above the rank of foreman, supervisor, dispatcher and assistant manager, persons employed in the sign, carpentry and supply shops, Contract Hardware Salesmen, Outside Industrial Salesmen and their support staff, office and clerical staff, persons regularly employed for not more than twenty-four hours per week, students employed during the school vacation period, and persons employed on a co-operative training basis with a recognized university." (77 employees in the unit). (THE BOARD NOTED FOR PURPOSES OF CLARITY THE AGREEMENT OF THE PARTIES ON THE FOLLOWING MATTERS WITH RESPECT TO THE BARGAINING UNIT; (A) THE PARTIES AGREE THAT EMPLOYEES OF BEAVER LUMBER COMPANY LIMITED EMPLOYED AS FULL TIME SALES CLERKS (INCLUDING THE CASHIER) IN THE SHOWROOM AT 1325 LAWRENCE AVENUE EAST SHALL FORM PART OF THE APPROPRIATE BARGAINING UNIT DESIGNATED ABOVE; (B) THE PARTIES FURTHER AGREE THAT CONTRACT HARDWARE SALESMEN, OUTSIDE INDUSTRIAL SALESMEN AND THEIR RESPECTIVE SUPPORT STAFF ARE NOT INCLUDED IN THE BARGAINING UNIT; (C) THE PARTIES FURTHER AGREE THAT PERSONS EMPLOYED IN THE SIGN, CARPENTRY AND SUPPLY SHOPS ARE NOT INCLUDED IN THE BARGAINING UNIT.).

Number of names of persons on voters' list	37
Number of persons who cast ballots	36
Number of ballots marked in favour of applicant	24
Number of ballots marked against applicant	12

4934-73-R: Nurses' Association New Mount Sinai Hospital (Applicant) v. Mount Sinai Hospital (Respondent) v. Group of Employees (Objectors).

Unit #2: "all registered and graduate nurses employed by Mount Sinai Hospital at Toronto, in a nursing capacity, save and except Head Nurses and Assistant Supervisors, persons above the rank of Head Nurse and Assistant Supervisor and persons regularly employed for not more than twenty-four hours per week." (10 employees in the unit).

Number of names of persons on revised voters' list	238
Number of persons who cast ballots	208
Number of ballots marked in favour of applicant	201
Number of ballots marked against applicant	7

(BARGAINING UNIT #1 - SEE APPLICATION FOR CERTIFICATION DISMISSED - NO VOTE CONDUCTED).

4948-73-R: Service Employees Union, Local 204, Affiliated with Service Employees International Union, AFL-CIO-CLC (Applicant) v. Waldheim Nursing Home Limited, carrying on business as Birchcliff Nursing Home (Respondent).

Unit #2: "all employees of the respondent in Metropolitan Toronto regularly employed for not more than 24 hours per week and students employed during the school vacation period, save and except supervisors, persons above the rank of supervisor, registered nurses, and office staff." (20 employees in the unit).

Number of names of persons on revised voters' list	21
Number of persons who cast ballots	10
Number of ballots marked in favour of applicant	8
Number of ballots marked against applicant	2

(BARGAINING UNIT #1 - SEE BARGAINING UNITS CERTIFIED - NO VOTE CONDUCTED).

4984-73-R: The Canadian Union of Public Employees (Applicant) v. The Town of Gananoque (Respondent).

- and -

4985-73-R: The Canadian Union of Public Employees (Applicant) v. The Town of Gananoque (Respondent).

Unit: "all employees of the respondent in the Town of Gananoque, save and except superintendent and persons above the rank of superintendent." (19 employees in the unit).

Number of names of persons on voters' list	11
Number of persons who cast ballots	11
Number of ballots marked in favour of applicant	9
Number of ballots marked against applicant	2

5078-73-R: Oil & Gas Technicians Service, Domestic & General Workers Union, Local 1267 (Applicant) v. Simmons Limited (Respondent) v. Simmons (Beauty Rest) Company Limited Employees Association (Intervener).

Unit: "all employees of the respondent at Brampton, save and except foremen, persons above the rank of foreman, office and sales staff, persons regularly employed for not more than 24 hours per week, and students employed during the school vacation period." (195 employees in the unit).

Number of names of persons on revised voters' list		196
Number of persons who cast ballots	170	
Number of spoiled ballots	1	
Number of ballots marked in favour of applicant	109	
Number of ballots marked in favour of intervener	60	

5167-73-R: London and District Building Service Workers' Union, Local 220, S.E.I.U., A.F.L., C.I.O., C.L.C. (Applicant) v. Sun Haven Nursing Home (1972) Limited (Respondent).

Unit: "all employees of the respondent in the Township of Delaware regularly employed for not more than 24 hours per week and students employed during the school vacation period, save and except foremen and supervisors, persons above the rank of foreman and supervisor, professional nursing staff and office staff." (45 employees in the unit).

Number of names of persons on revised voters' list		44
Number of persons who cast ballots	31	
Number of ballots marked in favour of applicant	24	
Number of ballots marked against applicant	7	

5200-73-R: United Steelworkers of America (Applicant) v. Anko Metal Products Ltd. (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office and sales staff and students employed during the school vacation period." (97 employees in the unit),

Number of names of persons on revised voters' list		93
Number of persons who cast ballots	76	
Number of spoiled ballots	1	
Number of ballots marked in favour of applicant	44	
Number of ballots marked against applicant	31	

APPLICATIONS FOR CERTIFICATION DISMISSED DURING MARCH

No Vote Conducted

4630-73-R: Canadian Union of Public Employees (Applicant) v. The Wellington County Board of Education (Respondent). (6 employees).

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4934-73-R: Nurses' Association New Mount Sinai Hospital (Applicant) v. Mount Sinai Hospital (Respondent) v. Group of Employees (Objectors).

Unit #1: "all registered and graduate nurses regularly employed for not more than twenty-four hours per week by Mount Sinai Hospital at Toronto, in a nursing capacity, save and except Head Nurses and Assistant Supervisors and persons above the rank of Head Nurse and Assistant Supervisor." (243 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(BARGAINING UNIT #2 - SEE APPLICATION CERTIFIED SUBSEQUENT TO POST-HEARING VOTE).

5104-73-R: United Brotherhood of Carpenters and Joiners of America, Local Union 1669 (Applicant) v. Dineen Roads and Bridges Limited (Respondent). (4 employees).

5221-73-R: Local Union 2341 of the International Brotherhood of Electrical Workers A.F.L.-C.I.O.-C.L.C. (Applicant) v. Franklin Electric of Canada Limited (Respondent). (167 employees).

5248-73-R: The Norfolk Board of Education Office Employees' Association (Applicant) v. the Norfolk County Board of Education (Respondent).

Unit: "all office and clerical employees employed by the respondent in the County of Norfolk save and except superintendent of business affairs and director of education and persons above that rank." (58 employees in the unit).

(1974) 2 OLRB M.R. - PAGE 182.

5288-73-R: Graphic Arts Union, Local 669, Subordinate to the International Printing and Graphic Communications Union (Applicant) v. The Spectator, a Division of Southam Press Limited, Hamilton, Ontario (Respondent). (71 employees).

5330-73-R: Sheet Metal Workers International Association - Local #269 (Applicant) v. Bill Bailey of Belleville Limited (Respondent). (3 employees).

Certification Dismissed Subsequent to Pre-Hearing Vote

4917-73-R: The Canadian Union of Industrial Steel Workers (C.N.T.U.) (Applicant) v. The Stanley Steel Company Limited, Hamilton (Respondent) v. United Steelworkers of America (Intervener).

Voting Constituency: "All employees of the respondent at Hamilton, save and except foremen, persons above the rank of foreman and office staff." (150 employees). (THE BOARD DIRECTED THAT THE BALLOT BOX CONTAINING ALL THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE BE SEALED AND THE BALLOTS NOT COUNTED PENDING THE FURTHER DIRECTION OF THE BOARD.).

Number of names of persons on voters' list	147
Number of persons who cast ballots	144
Ballots segregated and not counted	3
Number of ballots marked in favour of applicant	59
Number of ballots marked in favour of intervener	82

5036-73-R: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW) (Applicant) v. Du Pont of Canada Limited (Respondent) v. Kingston Independent Nylon Workers Union (Intervener).

Voting Constituency: "All employees of the respondent at its Nylon Manufacturing Plant and Finished Products Warehouse in the Township of Kingston, save and except foremen, persons above the rank of foreman, office staff and security guards." (1524 employees).

Number of names of persons on revised voters' list	1443
Number of persons who cast ballots	1443
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	418
Number of ballots marked in favour of intervener	1022

5123-73-R: Retail, Wholesale and Department Store Union, AFL:CIO:CLC (Applicant) v. G. Tamblin Limited (Respondent) v. United Brotherhood of Carpenters and Joiners of America, Local Union 93 (Intervener).

Voting Constituency: "All employees of the respondent at its Super Save Drug Marts at Ottawa, Carleton, regularly employed for not more than twenty-four hours per week, and students employed during the school vacation period, save and except managers, persons above the rank of manager and persons covered by subsisting collective agreements between the respondent and Retail, Wholesale and Department

Store Union AF:CIO:CLC: and its Local 414 and United Brotherhood of Carpenters and Joiners of America, Local Union 93." (28 employees). (... THE BOARD DIRECTS THAT THE BALLOT BOX CONTAINING ALL THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE BE SEALED AND THE BALLOTS NOT COUNTED PENDING THE FURTHER DIRECTION OF THE BOARD.).

Number of names of persons on revised voters' list		22
Number of persons who cast ballots	18	
Number of ballots marked in favour of applicant	6	
Number of ballots marked against applicant	12	

5173-73-R: Textile Workers Union of America, AFL-CIO-CLC (Applicant) v. Unitex Carpet Mills Limited (Respondent).

Voting Constituency: "All employees of the respondent at its plant in Weston, Ontario, save and except foremen, foreladies, persons above the rank of foreman and forelady, office and sales staff, persons regularly employed for not more than twenty-four hours per week, home workers and students employed during the school vacation period." (43 employees).

Number of names of persons on voters' list		44
Number of persons who cast ballots	35	
Number of ballots marked in favour of applicant	16	
Number of ballots marked against applicant	19	

5182-73-R: International Woodworkers of America (Applicant) v. BMV Manufacturing Company Ltd. (Respondent).

Voting Constituency: "All employees of the respondent at Milverton, Ontario, save and except foremen and foreladies, persons above the rank of foreman and forelady, office and sales staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (77 employees).

Number of names of persons on revised voters' list		67
Number of persons who cast ballots	60	
Number of ballots marked in favour of applicant	11	
Number of ballots marked against applicant	49	

5183-73-R: United Steelworkers of America (Applicant) v. Aclo Compounders Ltd. (Respondent).

Voting Constituency: "All employees of the respondent company in Cambridge, save and except foremen, persons above the rank of foreman, office and sales staff, persons regularly employed for not more than twenty-four hours per week, and students employed during the school vacation period." (41 employees).

Number of names of persons on revised voters' list		40
Number of persons who cast ballots	37	
Number of ballots marked in favour of applicant	16	
Number of ballots marked against applicant	21	

5190-73-R: United Paperworkers International Union (Applicant) v. Dominion Cellulose Ltd. (Respondent) v. Canadian Union of Operating Engineers (Intervener).

Voting Constituency: "All employees of the respondent in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office clerical and sales staff, quality control and engineering, plant nurse, and students employed during the school vacation period." (441 employees). (FOR THE PURPOSE OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE EMPLOYEES LOCATED AT THE RESPONDENT'S WAREHOUSE, 21 SNIDERCROFT ROAD, ARE TO BE INCLUDED IN THE VOTING CONSTITUENCY. ... THE BOARD DIRECTS THAT THE BALLOT BOX CONTAINING ALL THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE BE SEALED AND THE BALLOTS NOT COUNTED PENDING THE FURTHER DIRECTION OF THE BOARD.).

Number of names of persons on revised voters' list		439
Number of persons who cast ballots	427	
Ballots segregated and not counted	2	
Number of spoiled ballots	1	
Number of ballots marked in favour of applicant	107	
Number of ballots marked against applicant	317	

5226-73-R: International Association of Machinists and Aerospace Workers (Applicant) v. A. Schulman Canada Limited (Respondent).

Voting Constituency: "All employees of the respondent at St. Thomas, save and except foremen, persons above the rank of foreman, office and sales staff." (18 employees).

Number of names of persons on revised voters' list		19
Number of persons who cast ballots	18	
Number of ballots marked in favour of applicant	4	
Number of ballots marked against applicant	14	

Certification Dismissed Subsequent to Post-Hearing Vote

4528-73-R: Teamsters, Chauffeurs, Warehousemen and Helpers, Local 91, Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Universal Terminals Ltd. (Respondent).

Unit #2: "all employees of the respondent working at or out of its terminal at Cornwall, save and except foremen and dispatchers, persons above the rank of foreman and dispatcher, office and sales staff, service station attendant and persons defined in bargaining unit #1 herein, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (11 employees in the unit).

Number of names of persons on voters' list		13
Number of persons who cast ballots	13	
Number of ballots marked in favour of applicant	4	
Number of ballots marked against applicant	9	

(BARGAINING UNIT #1 - SEE BARGAINING UNITS CERTIFIED - NO VOTE CONDUCTED).

4837-73-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. The George Campbell Company Limited (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in Metropolitan Toronto, the Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville, and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (9 employees in the unit).

Number of names of persons on voters' list		2
Number of persons who cast ballots	2	
Number of ballots marked in favour of applicant	0	
Number of ballots marked against applicant	2	

4949-73-R: Canadian Food and Allied Workers Local Union 175, chartered by Amalgamated Meat Cutters and Butcher Workmen of North America (Applicant) v. Strano's Wholesale Fruit Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at its warehouse at Peterborough, save and except foremen, persons above the rank of foreman, office and sales staff, and students employed during the school vacation period." (31 employees in the unit).

Number of names of persons on voters' list		30
Number of persons who cast ballots	30	
Ballots segregated and not counted	6	
Number of ballots marked in favour of applicant	11	
Number of ballots marked against applicant	13	

5034-73-R: Teamsters Union, Local 938 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Airport Special Delivery Service Ltd. (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at Mississauga, Ontario, save and except foremen, persons above the rank of foreman, office and sales staff, persons regularly employed for not more than twenty-four hours per week, and students employed during the school vacation period." (17 employees in the unit).

Number of names of persons on revised voters' list		13
Number of persons who cast ballots	12	
Number of ballots marked in favour of applicant	3	
Number of ballots marked against applicant	9	

5082-73-R: International Union of Operating Engineers, Local 772 (Applicant) v. Domtar Chemicals Limited (Sifto Salt Division) (Respondent).

Unit #2: "all office and clerical employees of the respondent at 245 Regent Street in Goderich, save and except supervisors, persons above the rank of supervisor, sales staff, research and development laboratory staff, students engaged in a co-operative university program and students employed during the school vacatio period." (7 employees in the unit).

Number of names of persons on voters' list	7
Number of persons who cast ballots	6
Number of ballots marked in favour of applicant	2
Number of ballots marked against applicant	4

(BARGAINING UNIT #1 - SEE BARGAINING UNITS CERTIFIED - NO VOTE CONDUCTED).

5170-73-R: The Hotel and Club Employees' Union, Local 299, Toronto of the Hotel and Restaurant Employees' and Bartenders' International Union, A.F.L. - C.I.O. - C.L.C. (Applicant) v. The Bristol Place Hotel (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at Rexdale, save and except supervisors, persons above the rank of supervisor, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (199 employees in the unit).

Number of names of persons on revised voters' list	146
Number of persons who cast ballots	100
Ballots segregated and not counted	4
Number of spoiled ballots	3
Number of ballots marked in favour of applicant	37
Number of ballots marked against applicant	56

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING MARCH

5253-73-R: Printing Specialties and Paper Products Union, Local 466 (Applicant) v. Anglo Packaging Company (Respondent). (100 employees).

5259-73-R: Warehousemen and Miscellaneous Drivers, Local 419 affiliated with The International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. National Grocers Company Limited (Respondent). (12 employees).

5264-73-R: International Union of Operating Engineers, Local 793 (Applicant) v. Sillman Company (Northern) Limited (Respondent). (3 employees).

5265-73-R: Carpenters' District Council of Toronto and Vicinity on behalf of Local Unions 27, 666, 681, 1133, 1963, 3227, and 3233 (Applicant) v. Ontario Glass (Respondent). (5 employees).

5279-73-R: Canadian Union of Public Employees (Applicant) v. Ottawa General Hospital (Respondent) v. International Union of Operating Engineers, Local 796 (Intervener) v. Civil Service Association of Ontario (Inc.) (Intervener). (104 employees).

5285-73-R: Labourers' International Union of North America, Local 1089 (Applicant) v. The Lummus Company Canada Limited (Respondent). (48 employees).

5301-73-R: Warehousemen and Miscellaneous Drivers Local 419 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Emco Limited (Respondent). (86 employees).

5310-73-R: Canadian Union of Public Employees (Applicant) v. The Recreation and Arena Committee of the City of Belleville (Respondent). (37 employees).

5316-73-R: Labourers' International Union of North America, Local 183 (Applicant) v. Domain Properties Ltd. (Respondent). (6 employees).

5333-73-R: Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC (Applicant) v. Robson-Lang Leather Limited (Respondent). (4 employees).

5334-73-R: Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC (Applicant) v. Mercer Construction Company (Respondent). (4 employees).

5385-73-R: Labourers' International Union of North America (Applicant) v. Bathe McLellan Construction Ltd. (Respondent). (5 employees).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED OF DURING MARCH

4915-73-R: K. Raaflaub (Applicant) v. Printing Specialties and Paper Products Union - Local 466 (Respondent) v. Data Business Forms Limited (Intervener). (GRANTED).

Unit: "all employees of Data Business Forms Limited in the Town of Mississauga, save and except supervisors, persons above the rank of supervisor, office and sales staff and students employed during school vacation period." (65 employees in the unit).

Number of names of persons on voters' list		63
Number of persons who cast ballots	59	
Number of ballots marked in favour of respondent	17	
Number of ballots marked against respondent	42	

4956-73-R: William Wouters (Applicant) v. Canadian Union of Public Employees Local 1572 (Respondent) v. The Wentworth County Board of Education (Intervener) v. Group of Employees (Objectors). (184 employees). (DISMISSED).

4963-73-R: Norman Spencer MacKay (Applicant) v. Teamsters, Chauffeurs, Warehousemen & Helpers Local Union No. 141 (Respondent). (GRANTED).

Unit: "all employees of Marlatt Lumber & Hardware Limited at St. Thomas, save and except foremen, persons above the rank of foreman and office and sales staff." (5 employees in the unit).

Number of names of persons on voters' list		5
Number of persons who cast ballots	5	
Number of ballots marked in favour of respondent	1	
Number of ballots marked against respondent	4	

5220-73-R: V. Meius (Applicant) v. International Chemical Workers Un. (Respondent) v. Du Pont of Canada Limited, Photo Products (Intervener). (4 employees). (GRANTED).

APPLICATIONS FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING

MARCH

5021-73-R: Canadian Union of Public Employees, Local 1220 (Applicant) v. The Corporation of the Town of Stoney Creek (Respondent) v. The Corporation of the Township of Saltfleet (Intervener). (GRANTED).

Voting Constituency #1: "All employees of the respondent save and except foremen, persons above the rank of foreman, office staff, students employed during the school vacation period and persons regularly

employed for not more than twenty-four hours per week."

Number of names of persons on voters' list		34
Number of persons who cast ballots	30	
Number of spoiled ballots	1	
Number of ballots marked in favour of applicant	17	
Number of ballots marked against applicant	12	

Voting Constituency #2: "All office, clerical and technical employees of the respondent save and except Administrator-Clerk-Treasurer, Secretary to Administrator-Clerk-Treasurer, Engineer, Secretary to the Township Engineer, Recreation and Parks Director, Planning and Zoning Supervisor, Industrial Commissioner, Deputy Clerk-Treasurer, Water Supervisor, professional engineers and persons those ranks, and persons regularly employed for not more than twenty-four hours per week."

Number of names of persons on revised voters' list		20
Number of persons who cast ballots	19	
Number of ballots marked in favour of applicant	19	
Number of ballots marked against applicant	0	

5205-73-R: United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 46 (Applicant) v. Honeywell Controls Limited (Respondent). (GRANTED).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING MARCH

5151-73-U: Honeywell Controls Limited (Applicant) v. Those persons named in Schedule "A" attached hereto and United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, and its Local 46 (Respondent). (WITHDRAWN).

5202-73-U: Service Employees Union, Local 204, affiliated with the S.E.I.U., A.F. of L., C.I.O., C.L.C. (Applicant) v. Bestview Holdings Limited (Respondent). (WITHDRAWN).

COMPLAINTS UNDER SECTION 79 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURINGMARCH

4715-73-U: Arthur Joseph Roberts (Complainant) v. Operative Plasterers' and Cement Masons' International Association of the United States and Canada, Local 48 (Respondent). (DISMISSED).

(1974) 2 OLRB M.R. - PAGE 169.

4738-73-U: United Radio Electrical and Machine Workers of America (Complainant) v. Beaver Electronics Limited (Respondent). (GRANTED).

(1974) 2 OLRB M.R. - PAGE 120.

4930-73-U: International Woodworkers of America (Complainant) v. Decor Wood Specialties Limited (Respondent). (GRANTED).

(1974) 2 OLRB M.R. - PAGE 136.

4939-73-U: International Woodworkers of America (Complainant) v. Livingston Mutual Warehousing Limited (Respondent). (GRANTED).

4940-73-U: Canadian Textile and Chemical Union (Complainant) v. Artistic Woodwork Co. Limited (Respondent). (DISMISSED).

(1974) 2 OLRB M.R. - PAGE 157.

4971-73-U: Beckers Milk Retail Store Employees Union (Complainant) v. Becker Milk Company (Respondent). (DISMISSED).

4972-73-U: Beckers Milk Retail Store Employees Union (Complainant) v. Becker Milk Company (Respondent). (DISMISSED).

4979-73-U: Canadian Union of Operating Engineers (Complainant) v. Estates General Investments Limited (Respondent). (DISMISSED).

4980-73-U: Canadian Union of Operating Engineers (Complainant) v. Estates General Investments Limited (Respondent). (DISMISSED).

4981-73-U: Canadian Union of Operating Engineers (Complainant) v. Estates General Investments Limited (Respondent). (WITHDRAWN).

5028-73-U: Blair Berton Nowe (Complainant) v. The Schneiders Employees Association (Respondent). (DISMISSED).

5044-73-U: Canadian Textile & Chemical Union (Complainant) v. Dorothea Knitting Mills Limited (Respondent). (DISMISSED).

(1974) 2 OLRB M.R. - PAGE 149.

5065-73-U: George Wilson (Complainant) v. The Canadian Union of Public Employees Local 1334 (Respondent). (DISMISSED).

(1974) 2 OLRB M.R. - PAGE 176.

5128-73-U: Teamsters Union 879 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Complainant) v. Tughan Express (Respondent). (WITHDRAWN).

5147-73-U: D. Bennett (Complainant) v. Local 14831, United Steelworkers of America (Respondent). (DISMISSED).

5195-73-U: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW) (Complainant) v. Fruehauf Trailer Company of Canada Limited (Dixie Manufacturing Plant) (Respondent). (WITHDRAWN).

5201-73-U: Canadian Union of Public Employees and its Local 1590 (Complainant) v. Providence Villa Nursing Home and Hospital (Respondent). (WITHDRAWN).

5227-73-U: Canadian Union of Public Employees (Complainant) v. Saga Canadian Management Service Limited (Respondent). (WITHDRAWN).

5230-73-U: United Steelworkers of America (Complainant) v. Anko Metal Products Ltd. (Respondent). (WITHDRAWN).

5251-73-U: Local 12-L, Graphic Arts International Union (Complainant) v. Newsweb Enterprise Limited (Respondent). (WITHDRAWN).

5256-73-U: Mr. Kirk Xepappas (Complainant) v. Optical & Plastic Technicians & Allied Workers Union, Local 67 (Respondent). (WITHDRAWN).

5274-73-U: Karen Draycott (Complainant) v. L. Burfoot - Hospital Administrator (Respondent). (WITHDRAWN).

5294-73-U: Frank Tomsic (Complainant) v. United Brotherhood of Carpenters and Joiners of America: Carpenters District Council of Toronto and Vicinity (Respondent). (DISMISSED).

(1974) 2 OLRB M.R. - PAGE 177.

5327-73-U: Labour International Union of North America, Local 527 (Complainant) v. Gerard Lafleur Masonry (Respondent). (WITHDRAWN).

5336-73-U: James Harkness (Complainant) v. Loblaw's Gro. Co. Limited (Respondent). (WITHDRAWN).

APPLICATIONS UNDER SECTION 39 DISPOSED OF DURING MARCH

4850-73-M: Bert Ferwerda (Applicant) v. London and District Building Service Workers' Union, Local 220, S.E.I.U., A.F. of L., C.I.O., C.L.C. (Respondent Trade Union) v. Queens Ave. Manor Ltd. (Respondent Employer). (GRANTED).

5130-73-M: Miss Dorothy Steckle (Applicant) v. Service Employees Union, Local 210, AFL-CIO-CLC (Respondent Trade Union) v. Blue Water Rest Home (Respondent Employer). (GRANTED).

5295-73-M: Alex Speyers (Applicant) v. London and District Building Service Workers Union - Local 220 (Respondent Trade Union) v. Victoria Hospital (Respondent Employer). (DISMISSED).

APPLICATIONS FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

5304-73-M: Kimball Systems Ltd. (Employer) v. Printing Specialties and Paper Products Union, Local No. 466 (Trade Union). (GRANTED).

5343-73-M: Labourers' International Union of North America, Local 506 (Trade Union) v. Pre-Con Company (Employer). (GRANTED).

5344-73-M: International Union of Doll & Toy Workers, Local 905 (Trade Union) v. Milner Road Enterprises Ltd. (Employer). (GRANTED).

APPLICATIONS UNDER SECTION 55 DISPOSED OF DURING MARCH

5037-73-R: The Canadian Union of Public Employees (Applicant) v. The Corporation of the Township of Scugog (Respondent) v. Group of Employees (Objectors). (DISMISSED).

Unit: "all employees of The Corporation of the Township of Scugog save and except foremen, persons above the rank of foremen, office, technical and clerical employees."

Number of names of persons on voters' list		15
Number of persons who cast ballots	16	
Ballots segregated and not counted	1	
Number of ballots marked in favour of applicant	5	
Number of ballots marked against applicant	10	

5088-73-R: The International Brotherhood of Electrical Workers, Local 636 (Applicant) v. The Corporation of the City of Mississauga (Respondent) v. Canadian Union of Public Employees, Local 66 (Intervener). (GRANTED).

(1974) 2 OLRB M.R. - PAGE 184.

JURISDICTIONAL DISPUTE

4057-73-JD: Dufferin Precast Company, A Subsidiary of Vibrek Incorporated (Complainant) v. International Association of Bridge Structural and Ornamental Ironworkers, Local Union No. 700, Labourers International Union of North America Locals 625 and 506, and Poole Construction Limited (Respondents). (DIRECTION).

APPLICATIONS FOR DETERMINATION UNDER SECTION 95(2) DISPOSED OF DURING

MARCH

4441-73-M: Metropolitan Separate School Board (Applicant) v. Canadian Union of Public Employees & its Local 1328 (Respondent). (AFFIRMATIVE).

4978-73-M: Canadian Union of Public Employees and its Local 216 (Applicant) v. The Sault Ste. Marie Board of Education (Respondent). (AFFIRMATIVE).

5185-73-M: International Association of Machinists and Aerospace Workers and its Local Lodge #2315 (Applicant) v. Sheaffer Pen Company (Respondent). (AFFIRMATIVE).

5188-73-M: Amalgamated Plant Guards, Local 1962 (Applicant) v. York University (Respondent). (DISMISSED).

REFERENCES TO BOARD PURSUANT TO SECTION 96

5053-73-M: Canadian Phoenix Steel & Pipe (Toronto) Ltd. (Employer) v. United Steelworkers of America (Trade Union). (DISMISSED).

5204-73-M: Green Giant of Canada Limited (Employer) v. International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America A.F.L. - C.I.O. - C.L.C. (Trade Union). (DISMISSED).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

4828-73-R: Canadian Union of Public Employees (Applicant) v. North York General Hospital (Respondent) v. Canadian Union of General Employees (Intervener). (REQUEST DENIED).

4904-73-R: Sheet Metal Workers' International Association, Local Union #285 (Applicant) v. Rexdale Heating Limited (Respondent). (REQUEST DENIED).

(1974) 2 OLRB M.R. - PAGE 115.

4953-73-R: Civil Service Association of Ontario (Inc.) (Applicant) v. The Religious Hospitallers of St. Joseph of the Hotel Dieu at Kingston (Respondent). (REQUEST DENIED).

4999-73-R: Labourers' International Union of North America, Local 527 (Applicant) v. Bellai Brothers (Respondent). (REQUEST DENIED).

STATISTICAL TABLES FOR 4TH QUARTER AND OF FISCAL YEAR 1973-74

TABLE I

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

	Number Filed		
	4th Quarter	Fiscal Year	
	(Jan - Mar) 1973-74	1973-74	1972-73
I. Certification	311	1331	1136
II. Declaration Terminating Bargaining Rights	16	66	56
III. Declaration of Successor Status	16	42	57
IV. Declaration that Strike Unlawful	15	49	46
V. Declaration that Lock-Out Unlawful	-	3	3
VI. Consent to Prosecute	17	91	102
VII. Complaint of Unfair Practice in Employment (Section 79)	67	221	241
VIII. Miscellaneous	33	111	129
TOTAL	475	1914	1770
	==	==	==

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

	Number		
	4th Quarter	Fiscal Year	
	(Jan - Mar) 1973-74	1973-74	1972-73
Hearings and Continuation of Hearings by the Board	306	1278	1175

January to March.

TABLE IIIAPPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS
BOARD BY MAJOR TYPES

	Number Disposed of		
	4th Quarter (Jan - Mar) 1973-74	Fiscal Year	
		1973-74	1972-73
I. Certification	322	1344	1132
II. Declaration Terminating Bargaining Rights	18	58	56
III. Declaration of Successor Status	7	38	20
IV. Declaration of Strike Unlawful	9	41	37
V. Declaration that Lock-Out Unlawful	-	3	3
VI. Consent to Prosecute	16	91	128
VII. Complaint of Unfair Practice in Employment (Section 79)	72	235	226
VIII. Miscellaneous	<u>36</u>	<u>97</u>	<u>111</u>
TOTAL	480	1907	1713
	==	==	==

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD
BY TYPE AND DISPOSITION

	Number of Applications			Number of Employees*		
	4th Quarter	Fiscal Year		4th Quarter	Fiscal Year	
	(Jan - Mar)			(Jan - Mar)		
	1973-74	1973-74	1972-73	1973-74	1973-74	1972-73
<u>Certification</u>						
Granted	215	900	784	8404	37497	24966
Dismissed	70	296	239	5797	15524	12448
Withdrawn	<u>37</u>	<u>148</u>	<u>109</u>	<u>1582</u>	<u>4012</u>	<u>2990</u>
TOTAL	322	1344	1132	15783	57033	40404
	==	==	==	==	==	==
<u>Termination of Bargaining Rights</u>						
Granted	9	31	27	1197	2266	595
Dismissed	7	25	22	454	2111	751
Withdrawn	<u>2</u>	<u>2</u>	<u>7</u>	<u>47</u>	<u>47</u>	<u>127</u>
TOTAL	18	58	56	1698	4424	1473
	==	==	==	==	==	==

*These figures refer to the number of employees directly affected and are based on the number of employees in the bargaining units at the time the applications for certification were filed with the Board. Totals for applications dismissed and withdrawn are approximate.

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD
BY TYPE AND DISPOSITION (CONTINUED)

	Number of Applications		
	4th Quarter	Fiscal Year	
	(Jan - Mar)	1973-74	1972-73
	1973-74	1973-74	1972-73
III. <u>Declaration that Strike Unlawful</u>			
Granted	3	6	6
Dismissed	-	5	6
Withdrawn	<u>6</u>	<u>30</u>	<u>25</u>
TOTAL	9	41	37
	==	==	==
IV. <u>Declaration that Lock-Out Unlawful</u>			
Granted	-	-	-
Dismissed	-	3	2
Withdrawn	<u>-</u>	<u>-</u>	<u>1</u>
TOTAL	-	3	3
	==	==	==
V. <u>Consent to Prosecute</u>			
Granted	3	16	20
Dismissed	-	13	35
Withdrawn	<u>13</u>	<u>62</u>	<u>73</u>
TOTAL	16	91	128
	==	==	==
VI. <u>Complaint of Unfair Practice in Employment (Section 79)</u>			
Granted	5	17	17
Dismissed	24	80	87
Withdrawn	<u>43</u>	<u>138</u>	<u>122</u>
TOTAL	72	235	226
	==	==	==

TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF
BY THE ONTARIO LABOUR RELATIONS BOARD

	Number of Votes		
	4th Quarter	Fiscal Year	
	(Jan - Mar)	1973-74	1972-73
	1973-74	1973-74	1972-73
<u>Certification after Vote*</u>			
Pre-hearing Vote	8	64	47
Post-hearing Vote	17	90	75
Ballots not Counted	-	-	2
 <u>Dismissed after Vote</u>			
Pre-hearing Vote	14	49	36
Post-hearing Vote	18	54	57
Ballots not Counted	<u>2</u>	<u>5</u>	<u>4</u>
 TOTAL	59	262	221
	<u> </u>	<u> </u>	<u> </u>

*Includes applicant-intervener applications in which both applicant and intervener apply for a new unit and either applicant or intervener is certified.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF
BY THE ONTARIO LABOUR RELATIONS BOARD

	Number of Votes		
	4th Quarter	Fiscal Year	
	(Jan - Mar)	1973-74	1972-73
	1973-74	1973-74	1972-73
*Respondent Union Successful	-	3	3
Respondent Union Unsuccessful	<u>4</u>	<u>17</u>	<u>13</u>
 TOTAL	4	20	16
	<u> </u>	<u> </u>	<u> </u>

*In Termination Proceedings where a vote is taken the applicant is a group of employees or the employer; the incumbent union is thus the respondent.

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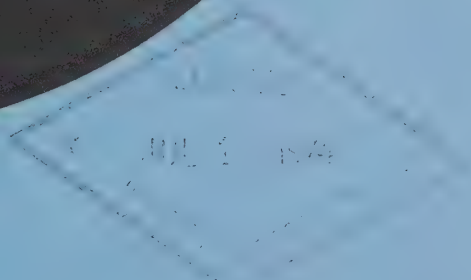
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Monthly Report



ONTARIO, LABOUR RELATIONS BOARD

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ONTARIO LABOUR RELATIONS BOARD REPORTS

A MONTHLY SERIES OF DECISIONS FROM THE

ONTARIO LABOUR RELATIONS BOARD

CITED [1974] OLRB REP.

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same result would have followed if the word "purpose" and the word "a" had been used.

13. In the result, therefore, we hold that while section 80 cannot be construed to change the meaning of the word "person" in section 58 and other sections of the Act (except sections 71 and 79 as outlined above) it does provide a remedy through section 79 for persons otherwise excluded by the provisions of section 1(3) if such persons are already covered by some other provision of the Act.

14. Therefore, in so far as this request for reconsideration of the Board's decision of February 12, 1973 is based on counsel's argument with respect to section 58, the Board confirms its decision that the complainant, if excluded by section 1(3)(b), could not avail himself of Section 79. However, in so far as the complaint is based on the respondent allegedly acting contrary to section 61, section 79 may be available to the complainant even if he falls under section 1(3)(b). We use the word "may" because, although it has been assumed throughout these reasons (and in argument before the Board) that the word "person" in section 61 is not restricted to "employee" we cannot recall a case where this Board has been called on to deal with that question. We are not therefore precluding an argument on this point being made to the Board in subsequent proceedings in this complaint. Thus, any decision at this time to modify our earlier decision in so far as it relates to section 61 would be premature.

15. There remains for consideration the future course of these proceedings in the light of our decision herein. It is the position of the complainant that he is not a person excluded by the provisions of section 1(3)(b) of the Labour Relations Act while the respondent takes the position that the complainant does exercise managerial functions within the meaning of the said section. As noted earlier in these reasons, the Board appointed an Examiner to inquire into the duties and responsibilities of the complainant and the Examiner's inquiry has been completed and his report has been issued. The respondent notified the Board that it wished to make representations at a hearing before the Board with respect to the conclusions that the Board should draw from the Examiner's report. Accordingly, the Registrar is directed to list this matter for hearing in order to enable the parties to make representations to the Board with respect to the report of the Examiner dated August 2, 1973. At that hearing the Board will also consider such representations as the parties may wish to make with respect to whether section 61 of the Labour Relations Act applies to persons other than employees covered by the Act.

4495-73-R: United Steelworkers of America (Applicant) v. SHELL CANADA LIMITED (Respondent).

BEFORE: D.E. Franks, Vice-Chairman, and Board Members J.D. Bell and P.J. O'Keeffe.

DECISION OF D.E. FRANKS, VICE-CHAIRMAN, AND BOARD MEMBER P.J. O'KEEFFE:
April 2, 1974.

1. No statement of objections and desire to make representations has been filed with the Board within the time fixed under subsection 3 of section 42 of the Board's Rules of Procedure following the service of the Report of the Examiner dated December 19, 1973, in this matter.
2. This application concerns a number of persons who are engaged in oil burner servicing for the respondent company. The Report of the Examiner deals with the employment status of these persons on the basis of an agreement of the parties to accept the evidence of one employee as representative of all of the persons in dispute. The evidence before the Board is that the individual oil burner mechanic is signatory to a contract with the respondent. That contract is entitled "Heat Service Contract" and is dated April 1, 1973. This contract together with its schedules form part of the Examiner's Report together with certain evidence which gives details concerning the operation of the heat service contract and the relationship between the individual and the respondent.
3. The applicant argues that the individuals concerned are employees of the respondent. The respondent takes the position that the persons are independent contractors and not employees. The solicitor for the respondent has dealt with the facts in the present case on the basis of the four-fold test for determining the employment relationship set out by Lord Wright in the Montreal v. Montreal Locomotive Works Co. Ltd. case 47 1 D.L.R. 161 (P.C.) and we propose to deal with the facts of the present case along the lines of this four-fold test.
4. The first matter to be dealt with is the matter of control. In the present case the respondent does not control the hours of work, nor does the respondent control the scheduling of the various services provided for customers of the respondent by the individual. Further, the evidence of the individual serviceman was that he did not know whether he could do work for persons other than the respondent. However, he has never had the time to do such additional work. He also stated that no one checks his work. However, the contractual arrangement between the respondent and the individual would indicate that the respondent is under that contract entitled to control more of the operation of the individual than the serviceman who gave evidence is aware. The basic contract calls for the supply, by the contractor, of repair service on a full twenty-four hour basis including Sundays and holidays,

and such service extended to the customer is normally assigned to other contractors where such other contractor fails to provide such complete service. Further, although no supervision is directly applied to the work of the serviceman the contract requires the individual to notify the respondent of all work done under that contract. On the other hand the work orders are dispatched to him from the respondent and customer complaints are made to the respondent and not directly to the individual. We are thus faced with the view that although the control over the contract of the individual serviceman is not very extensive there are certain key elements of control which remain in the hands of the respondent, and although the elements of control is not of itself conclusive the extent of control is consistent with the finding that such servicemen are employees of the respondent.

5. The next element to be considered is the ownership of the tools. The Report of the Examiner indicates that certain tools are owned by the individual servicemen. Thus, the vehicle and the equipment used are owned by the individual. However, the ownership of the vehicle is limited in that its appearance (for advertising purposes) is controlled by the respondent. Further, the radio which is required equipment in the vehicle is paid for by both the individual and the respondent. On the other hand the uniform which he wears when making service calls is completely paid for by the respondent. Further, certain business tools such as records pertaining to the customers serviced by the contractor remains the property of the respondent. Similarly, the customer of the respondent pays the respondent and the respondent in turn reimburses the individual contractor for any of the work done. When we consider the overall ownership of tools we are of the view that the ownership of the total "business" by the individual is extremely limited. We are therefore of the view that the individual serviceman owns only those tools as are consistent with findings of an employment relationship with respect to certain other skilled tradesmen in other industries.

6. In dealing with the matter of the chance of profit and the risk of loss these can be dealt with together in the present case. The individual serviceman does not really employ people to help him although he has, in his words, had a friend accompany him on occasion in return for which he would just buy him a beer. The basic mode of payment in the present case is that for basic service of a customer's equipment the serviceman is paid a fixed tariff per customer per annum. This "service" accounts for the bulk of the annual earnings of the individual serviceman. If further servicing is not required then his profit is increased. On the other hand if further servicing is required he would incur a "loss". The remainder of the services are provided for on what is clearly a piece work arrangement of paying for the services. We are of the view, however, that this basic formula for remunerating the serviceman does not really give rise to a change of profit and risk of loss situation. At best it can only be described as a sophisticated method of piece work

payment whereby the serviceman is only paid for service calls which are adequately performed and is not paid in effect for service calls which have been inadequately performed. We are therefore of the view that the chance of profit and the risk of loss is not within the power of the individual serviceman and in this regard such individuals cannot be considered as independent contractors, but rather as employees.

7. Based on the foregoing considerations we find that the individual oil burner servicemen are employees of the respondent for the purposes of the Ontario Labour Relations Act.

8. The Report of the Examiner states that there are nine persons whose employment status is in issue. Two of these persons are engaged in servicing oil burners completely within the Province of Quebec. Both the applicant and the respondent agree that these two persons are not included in the list of employees with the result that there are seven persons in the bargaining unit.

9. The Board finds that the applicant is a trade union within the meaning of section 1(1)(n) of The Labour Relations Act.

10. The Board further finds that all employees of the respondent in Ottawa employed as oil burner servicemen, save and except foremen and persons above the rank of foreman, constitute a unit of employees of the respondent appropriate for collective agreement.

. . .

12. A certificate will issue to the applicant.

DECISION OF BOARD MEMBER J.D. BELL: April 2, 1974.

1. I do not agree with the findings of the majority of the Board that these oil burner servicemen are employees of the respondent for the purposes of the Ontario Labour Relations Act.

2. The majority has applied the fourfold test set out by Lord Wright in the Montreal v. Montreal Locomotive Works Co. Ltd. case 47 1 D.L.R. 161 (P.C.) I agree with this approach.

3. First, control. In paragraph 4 page 2 the majority states in part:

"In the present case the respondent does not control the hours of work, nor does the respondent control the scheduling of the various services provided for customers of the respondent by the individual.

Further, the evidence of the individual serviceman was that he did not know whether he could do work for persons other than the respondent. However, he has never had the time to do such additional work. He also stated that no one checks his work."

This clearly indicates that the respondent does not control three of the most important factors an employee would be subjected to by an employer, i.e.:

1. Hours of Work
2. Scheduling of Work
3. Quality of Work

4. The majority continues by stating:

"However, the contractual arrangement between the respondent and the individual would indicate that the respondent is under that contract entitled to control more of the operation of the individual than the serviceman who gave evidence is aware."

I find this difficult to reconcile. If the individual being examined is not aware of some control then it must be an insignificant element of the operation.

5. The control over the contract is not very extensive and those elements which remain in the hands of the respondent are of a minor administrative nature helpful to the serviceman in fulfilling his contract.

6. Tools. The major tools, i.e., vehicle and equipment are owned by the servicemen. Insurance coverage for the vehicle and for house holder damage is bought directly by him. The tools of skilled tradesmen in other industries usually consist of hand tools not vehicles and are a poor comparison. I cannot see that by permitting the company to paint his vehicle with such advertising and in such colours as chosen by the respondent in any way limits the serviceman's ownership of such vehicle.

7. Profit and loss. The serviceman is master of his own time. He depends on his skill and ability to perform the tasks necessary to fulfil his contract with the respondent. He negotiated a fixed price with the respondent for the basic service. Having agreed to this price he then is dependent on his skill and ability in performing the task to make it profitable or he will incur a loss. The major control is customer satisfaction with his performance. As this

service is the bulk of the work his opportunity for profit or his risk of loss is dependent entirely on him.

8. Having considered the above I am satisfied that these oil burner servicemen are independent contractors and not employees of the respondent. Therefore I would dismiss this application.

5211-73-R: Building Service Employees International Union Local 478, Affiliated with A.F. of L., C.I.O., C.L.C. (Applicant) v. COCHRANE NURSING HOME LIMITED (Respondent) v. Cikent Corporation Limited (Intervener) v. Group of Employees (Objectors).

- and -

5212-73-R: Building Service Employees International Union Local 478, Affiliated with A.F. of L., C.I.O., C.L.C. (Applicant) v. COCHRANE NURSING HOME LIMITED (Respondent) v. Cikent Corporation Limited (Intervener) v. Group of Employees (Objectors).

BEFORE: Frank V. Boscariol, Vice-Chairman, and Board Member O. Hodges and F. W. Murray.

APPEARANCES AT THE HEARING: M. Levinson and J. Nicholls for the applicant; K. R. Valin, C. Heon and C. Theberge for the respondent; no one appearing for the intervener; A. Reshetylo for the objectors.

DECISION OF VICE-CHAIRMAN FRANK V. BOSCARIOL AND BOARD MEMBER F. W. MURRAY:
April 4, 1974.

1. The Board directs that the above applications be and they are hereby consolidated and treated as one application.

. . .

3. Having regard to the representations of the parties and pursuant to Section 54 of the Board's Rules of Procedure the Board directs that Cikent Corporation Limited be added as a party and shown as Intervener in these proceedings.

4. The evidence as adduced during the course of these proceedings establishes that the respondent operates two nursing homes in Kirkland Lake under the names of "The Chateau Nursing Home" and "The Chateau Nursing Home Annex", located on Chateau Drive and Government Road, respectively, (and hereinafter referred to as the "Drive" home and the "Annex" home). It would appear that these homes are situated approximately one mile apart and the respondent alleges that there is no interchange of employees as between these two homes. The applicant, on the other hand, submits that there exists a community of interest amongst the employees of both of these homes and that the appropriate bargaining unit should encompass all of the respondent's employees at Kirkland Lake.

5. Although formal notice of this application was properly posted upon the premises of the "Drive" home in compliance with the Board's

Rules of Procedure, no such Form 5 "Notice to Employees" was ever posted upon the premises of the "Annex" home. Many reasons were advanced to us by the parties as to why such a posting was not effected. Having carefully reviewed the representations in this regard, it would appear that the activities of the representatives of both the applicant and the respondent may have contributed to this situation. Be that as it may, it is nevertheless clear that the vast majority of the employees on behalf of whom the applicant is seeking bargaining rights in this application, have not in fact been notified of these proceedings, in compliance with the Board's Rules of Procedure.

6. It is noted that although the petitioners at the "Drive" home were represented at the hearing, no one appeared on behalf of any petitioner at the "Annex" home. In an effort to show that the employees at the "Annex" home were in fact aware of these proceedings, the applicant sought leave of the Board to adduce evidence to the effect that a petition was nevertheless circulated amongst these employees at the "Annex" home. The majority of this Board confirms its oral decision delivered at the hearing of this matter on March 29, 1974, which rejected the applicant's position in this regard. In our opinion, had the Board proceeded to hear further evidence and had it not adjourned at this point, it would have been tantamount to a denial of natural justice in the particular circumstances of this case.

7. Accordingly, the Registrar is directed to extend the terminal date in this application in order to effect a proper posting of the Form 5 "Notice of Employees" upon the premises of the "Annex" home as prescribed by the Board's Rules of Procedure.

8. Counsel for the applicant also requested that the Board issue a bench warrant to Mr. Gaston Heon. In this regard, we would direct counsel to the provisions of Section 12 of The Statutory Powers Procedure Act.

DECISION OF BOARD MEMBER OLIVER HODGES: April 4, 1974.

1. The name and address held out to the public by the respondent as it appears on the company letterhead is "The Chateau Nursing Home, Kirkland Lake, Ontario". There is a postal code rubber stamped on the letterhead as "P2N 3K8". No telephone number appears on the letterhead. The 1974 Kirkland Lake and area telephone book lists one name under "Nursing Homes" in the yellow pages. It appears as "Chateau Nursing Home The". The address and phone number appear as "Chateau Dr... 567-6509". The listing in the white pages of the telephone book is identical, and there is no similar name listed there, either. There are three individuals listed under the name "Cochrane" in the white

pages, but nowhere does "Cochrane Nursing Home Limited" appear. However, "Cikent Corporation Ltd., 37 Govt. RD. W...567-6020" does appear in the white pages, and in the same style in the yellow pages under the heading "Management Consultants".

2. Two applications for certification, one for all full-time and one for all part-time employees, were made on 14 February 1974 in the customary form, indicating exclusions normally expressed for the industry concerned. Seventy (70) full-time employees were said to be in the proposed full-time unit (Board File 5212-73-R). Seven (7) part-time employees were said to be in the proposed part-time unit (Board File 5211-73-R). No reason is given for making separate applications. However, the total of "all employees" sought by the applicant according to paragraph 3 of the Form 1 filed for each category totals seventy-seven (77).

3. The Form 1 in each case was dated at Kirkland Lake, Ontario, and gave the address of the respondent in 1(c) as "Chateau Drive, Kirkland Lake, Ont.". Subsequently, on 18 February 1974, the trade union by telegram to the Board requested an amendment to paragraph 3 of the Form 1 Application for Certification in each file to include the words "Kirkland Lake, Ontario". in the description of the bargaining unit.

4. The Notice to Employees of Application for Certification and of Hearing, Form 5, does not show any address for the respondent "The Chateau Nursing Home". However, Form 3, Notice of Application for Certification and of Hearing, sent by the Board to the respondent on 18 February 1974, shows the address of the respondent as "The Chateau Nursing Home, Chateau Drive, Kirkland Lake, Ontario", the same as stated by the union in 1(c) of the Application for Certification.

5. One reason for failing to post on all of the company premises, as advanced by the respondent, that the use of the form of address given in 1(c) of the applications in fact restricted the scope of the application to that part of the Chateau Nursing Home located at that particular address, is incredibly ridiculous. That unbelievable argument is all the worse when made as it was by the industrial relations firm representing the respondent in this matter, and who purport to act as practitioners and specialists in matters of industrial relations before this Board.

6. The Reply to Application for Certification, Form 9, paragraph 1(b) given the address of the respondent as: "P. O. Box 907, Kirkland Lake, Ontario", and at paragraph 1(c) the address for service as: "Northern Industrial Relations Association Corporation Limited, 105 Durham Street, South, Sudbury, Ontario, Attention: K. R. Valin". This reply indicates in paragraph 4 that there are sixteen (16) in the unit described by the applicant is reproduced in paragraph 5 of Form 9 as follows:

All Employees of the Respondent at the Chateau Nursing Home at Kirkland Lake, Ontario, save and except professional nursing staff, physiotherapist, occupational therapist, supervisory foremen, persons above the rank of supervisor or foremen, office staff, persons regularly employed for not more than twenty-four (24) hours per week and students employed during the school vacation period.

7. The failure of the respondent to post notices at all of its locations in Kirkland Lake is in my opinion at the very least a manoeuvre to delay these proceedings and possibly even an abuse of the Board's privilege. As I said in paragraph 5 above, all the more so when the respondent is represented before this Board as it is in this matter. It is the well-known practice of the Board to define a unit to include all employees in an application under section 6(1) within a municipality, a practice so elementary and well established that a firm of industrial relations specialties would be expected to know it well.

8. The concern of my colleagues as expressed in paragraph 6 of their majority decision would have the benefit of evidence had even one of the employees at the "Annex" appeared at the hearing in the role of objector to the union application. I am satisfied that in the circumstances of this case the employees at the "Drive" and at the "Annex" are quite well aware that a union is seeking certification to represent them in collective bargaining with their employer. The direct result of the majority decision in this matter is to the detriment of those employees who have signed membership cards in the applicant union and whose rights as expressed in the Act are at the very least delayed.

9. It is unreasonable and unrealistic to expect an applicant to probe intricate corporate organizational structures when naming an employer in an application for certification. The Reply to the Application, Form 9, 1(2) shows the correct name of the respondent as "The Cochrane Nursing Home" in both files. Counsel for the respondent admitted at the hearing that Cochrane Nursing Home was the correct corporate identity of the employer at both the "Drive" and the "Annex". However, a T-4 1973 statement of remuneration paid shows on its face the name of "Cochrane Nursing Homes Ltd." and "Chateau Nursing Home" with one address, "P.O. Box 907, Kirkland Lake, Ontario". A cheque stub or remuneration of earnings also tendered the Board by the applicant identified its source as Cikent Corporation Limited, Kirkland Lake, Ontario".

10. Membership cards signed by employees indicate the name of the employer opposite the question "Employed by" as "Chateau Nursing Home", "Chateau Annex", "Chateau Nursing Home Annex" and "Chateau Drive". Obviously the union organizational campaign covered both locations and the application for certification is for both locations.

11. The evasive tactic of the respondent in failing to post at both locations is not in my view meeting the purpose of the Labour Relations Act as expressed in the preamble. To avoid further and unwarranted delay I would bring the named respondent parties within section 1(4) of the Act:

1(4). Where, in the opinion of the Board, associated or related activities or businesses are carried on by or through more than one corporation, individual, firm, syndicate or association, or any combination thereof, under common control or direction, the Board may treat the corporations, individuals, firms, syndicates or associations or any combination thereof as constituting one employer for the purposes of this Act.

and I therefore so direct.

12. With regard to the failure of Mr. Gaston Heon to respond to the summons issued by the Board, and particularly in view of failure of the respondent to give reasons for release when sought by the applicant, I would move to assure the attendance of Mr. Heon at any subsequent hearing in this matter under section 92(2)(a), which states:

92(2)(a)...to summon and enforce the attendance of witnesses and compel them to give oral or written evidence on oath, and to produce such documents and things as the Board considers requisite to the full investigation and consideration of matters within its jurisdiction in the same manner as a court of record in civil cases.

13. It is further my view that the extension of the terminal date must apply at both the "Drive" and the "Annex". If it is to apply at all, it must be extended for all purposes.

4450-73-R: Labourers' International Union of North America, Local 183 (Applicant) v. PENICHE CONSTRUCTION FORMING (Respondent).

BEFORE: D.E. Franks, Vice-Chairman, and Board Members H.J.F. Ade and E. Boyer.

APPEARANCES AT THE HEARING: R. Koskie and M.J. Reilly for the applicant; no one appearing for the respondent; T. Neil for Labourers' International Union of North America, Local 506.

DECISION OF D.E. FRANKS, VICE-CHAIRMAN, AND BOARD MEMBER H.J.F. ADE: April 4, 1974.

1. The present case is one of a number of applications for certification that raise certain difficult and important issues concerning the appropriate bargaining unit. In order to obtain the benefit of a wide range of representations on these issues and in order to deal with these issues consistently the Board caused these cases to be listed for hearing at the same time. The Board heard evidence and argument on the issue of the appropriate bargaining unit and has arrived at a decision. However, we would, at the very start like to express our appreciation to counsel, and particularly counsel for the applicant, for their assistance in this matter.

2. The employees affected by this application work in a segment of the construction industry which has not, in recent years in the Toronto area, been organized by any of the construction industry trade unions. We are thus faced for the first time, with the problem of determining the appropriate unit of employees for collective bargaining, in this particular situation. The determination of the appropriate bargaining unit in this case, however, raises two issues of some considerable importance. Both of these issues arise out of the particular bargaining unit that the applicant claims to be appropriate. The first issue results from the fact that there would be no employees in the bargaining unit which the Board normally finds as the appropriate unit for this particular applicant. The second issue concerns the request for a major departure from the usual type of bargaining unit in the construction industry.

3. The applicant in this case is one of two locals of the Labourers' International Union of North America having territorial jurisdiction over a geographic area relating to the Metropolitan Toronto area and its vicinity. Ever since the decision of the Board in the Cross Town Paving case (1965) May, OLRB Mthly. Rep., 128 the Board has maintained a consistent practice when determining an appropriate bargaining unit of construction labourers for the Toronto area, of distinguishing between these two locals in respect of the appropriate bargaining unit. The effect to be given the Cross Town Paving case, *supra*, in the present situation was raised by the Board in its decision of October 2, 1973, in this matter. In accordance with that decision notice was given to both the Labourers' International Union of North America and Local 506, the sister local of the applicant in the present case. However, only Local 506 appeared at the hearing and made representations on this issue.

4. The position taken by the applicant with respect to the Cross Town Paving decision is that the distinction made therein should be discontinued in determining appropriate bargaining units. The removal of this distinction was also requested by Local 506. The result of this position would be that the Board would not refer to "building projects" when determining the appropriate bargaining unit for either Local 506 or Local 183 of the Labourers' Union.

5. In support of its contention the applicant adduced evidence concerning the events which have occurred subsequent to the decision in the Cross Town Paving case. The evidence of Michael Reilly, the administrator of the applicant, concerning these events was as follows: At the time of the Cross Town Paving decision the general president of the Labourers' International Union of North America had by a letter dated December 10, 1964, awarded jurisdiction in residential construction to Local 506. This letter was, in fact, referred to by the Board in its decision in the Cross Town Paving case. In March of 1967 Local 506 in the exercise of its jurisdiction became a member of the Council of Concrete Forming Trade Unions, which Council organized employees in concrete forming work on apartment building projects in the Toronto area. Sometime in April of 1969, representatives of Local 183 and Local 506 met with representatives of the Labourers' International Union in Chicago. The result of that meeting was a transfer of jurisdiction to Local 183 over certain of the employees in residential construction, namely those involved in concrete forming and employees of apartment builders. On the other hand Local 506 continued inter alia to exercise jurisdiction in residential construction with respect to bricklayers' and plasterers' helpers. It would appear that no document emerged from this meeting setting out this change in jurisdiction, and the evidence of Mr. Reilly on this matter was that the award of jurisdiction was conditional on Local 183 being successful in organizing the employees of the employers concerned. In June of that year Local 183 replaced Local 506 as a member of the Council of Concrete Forming Trade Unions and Local 183 remained a member of that Council until September 1971. In May 1970 Local 506 appealed to the General Executive Board of the Labourers' International Union to restore its former jurisdiction in residential construction. That request was refused. This decision of the General Executive Board refusing to recognize the request for additional jurisdiction in the residential housing field was reported to the two locals of the Labourers' Union by a letter dated March 2, 1971.

6. Having dealt with the events which changed the jurisdiction of the respective locals we now turn to how the increased jurisdiction of Local 183 was exercised by that local. In this regard the evidence of Mr. Reilly was that from and after September of 1971, Local 183 entered into collective agreements with concrete forming contractors engaged on apartment building construction. These agreements are of a standard form and have resulted in an agreement with the Toronto

Form Work Association. In all, Local 183 represents about two and one-half thousand employees engaged on concrete forming work on apartment buildings pursuant to these collective agreements. In addition to the collective agreements dealing with concrete forming on apartment buildings Local 183 has also entered into collective agreements with various apartment developers through an agreement with the Metropolitan Toronto Apartment Builders Association covering various employees of these apartment developers in certain specific classifications.

7. It is clear that the collective agreements referred to above affect employees who are engaged in "building projects". It is therefore clear from the evidence of Mr. Reilly that the exclusion of "construction labourers engaged on building projects" no longer accurately reflects either the jurisdiction of Local 183 or the collective bargaining activity of Local 183. We are thus lead to the conclusion that the Board's decision in the Cross Town Paving case could no longer be allowed to stand as a policy for determining the appropriate bargaining unit in applications by either Local 183 or Local 506 of the Labourers' International Union.

8. The removal of the distinction between Local 183 and Local 506 was advocated by both Locals. Both of the Locals have agreed on an outline of their jurisdiction which is as follows:

Local 506

- (i) Employees engaged on commercial type projects including hospitals, schools, office buildings, industrial plants, etc.
- (ii) Labourers or helpers of bricklaying and plastering contractors engaged on apartment building projects.

Local 183

- (i) All employees engaged in concrete forming work on apartment buildings and houses.
- (ii) Construction employees of apartment builders.
- (iii) All employees engaged in concrete forming work on commercial projects being constructed by "owner-builders" pursuant to the aforementioned agreement between the

**Metropolitan Toronto Apartment Builders'
Association and the Toronto Building and
Construction Trades Council (Residential
Division) September 20, 1969;**

and this appears to reflect the evidence given by Mr. Reilly as to the present state of the jurisdiction of Local 183 and Local 506 and their current collective bargaining activity. It does not, however, deal with other bargaining relationships to which Local 183 is party (e.g., heavy construction, road building and sewer construction). We are concerned with the reference to "owner-builders" and the agreement between the Metropolitan Toronto Apartment Builders' Association and the Toronto Building and Construction Trades Council (Residential Division). This agreement in effect creates a jurisdictional relationship which lacks any certainty. We do not propose to deal with this agreement in this application since it is only incidental to our concern in the present application. However, we are convinced that such ambiguity in the jurisdiction between Locals of the same trade union is not in the best interests of harmonious labour relations.

9. In view of the foregoing we are not prepared to follow the Cross Town Paving decision in the present situation. It is clear from the facts that Local 183 is actively engaged in representing employees engaged in building projects, viz., residential construction. However, we are not prepared to remove all distinctions between these two local unions as to the appropriate bargaining unit to which they are entitled. Although the term "building projects" no longer reflects the difference between the jurisdiction of these two locals, besides the residential activity of Local 183 there are other distinct bargaining patterns in the Toronto area which are still distinguished by those two locals. On the one hand Local 506 still has jurisdiction over "building projects" which are other than those of a residential nature, e.g., industrial, institutional and commercial building projects. On the other hand Local 183 exercises jurisdiction over the remaining types of projects such as sewers, bridges, tunnels and roads. It is our concern, that to remove completely the distinction between the appropriate bargaining unit granted to these two locals would have an unsettling effect on what are presently established and important patterns of bargaining in the construction industry in the Toronto area. This distinction was reflected in the bargaining units which resulted from the Cross Town Paving case, and although that distinction can no longer stand, in toto, we are of the view that to completely remove the distinction between the two types of bargaining units would lead to undesirable consequences. The effect of this type of distinction is to designate at the time representation rights are determined, which bargaining pattern is the appropriate bargaining pattern for the particular case at hand. The failure by the Board to recognize the appropriate bargaining pattern when determining the appropriate bargaining unit adds an additional element to the collective bargaining

activity. This bargaining in turn is reflected in a modification of the Board's finding of the appropriate bargaining unit. But, surely, the Board should complete all the findings with respect to the unit of employees appropriate for collective bargaining when it makes the determination required of it under section 6 of the Act.

10. We are also concerned that the failure to continue to distinguish between these two locals of the same union would lead to future jurisdictional disputes. There are examples of two locals of the same craft union having concurrent geographical jurisdiction, and the Board has not found it necessary to make such a distinction. The present situation is distinguishable in that the trade jurisdiction claimed by both locals and their parent international union ranges over all types of construction. The scope of jurisdiction claimed by each of the locals affects all types of unionized construction and creates a complex jurisdictional boundary which if ignored at the time when the bargaining unit is being determined would expose a substantial part of the construction industry to jurisdictional disputes of an extraordinary kind, i.e., two locals of one union rather than two different trades, competing for the same work assignment.

11. Having regard to the foregoing considerations, the Board proposes at this time to set out the form of bargaining units which it proposed to treat as appropriate bargaining units for construction labourers in Board Area 8 (i.e., Metropolitan Toronto, the Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario).

Units for Local 183

(i) All construction labourers employed on residential construction, save and except construction labourers employed as helpers of bricklayers and plasterers, non-working foremen and persons above the rank of non-working foreman.

(ii) All construction labourers, save and except construction labourers employed on building projects, non-working foremen and persons above the rank of non-working foreman.

Unit for Local 506

All construction labourers employed on building projects, except residential building projects, but including labourers employed as

helpers of bricklayers and plasterers, save and except non-working foremen and persons above the rank of non-working foreman.

12. Having disposed of the preliminary matter with respect to the appropriate bargaining unit for this particular applicant we come now to the second major issue in this case and that concerns the actual determination of the appropriate bargaining unit. The appropriate bargaining unit in the construction industry case is by subsection 1 of section 108 defined by reference to a geographic area. The geographic area is not in issue in the present case, but what is in issue is the manner in which the Board describes bargaining units in the construction industry. The construction industry trade unions are predominately craft trade unions and the bargaining units in the construction industry which the Board normally finds to be appropriate reflect the incidence of craft organization of the construction industry. In this regard, although the labourers are not actually granted a craft unit, the unit which the Board normally finds is appropriate for construction labourers appears to be a craft unit namely:

All construction labourers in the employ of the respondent (in a particular geographic area), save and except non-working foremen and persons above the rank of non-working foreman.

The applicant in the present case is requesting the Board to depart from the bargaining unit that it normally finds to be appropriate in two significant ways. First, the applicant is requesting a unit of all construction employees and secondly, the applicant is asking that the appropriate unit be limited to a certain operation of the employer namely those employees "engaged in concrete forming construction".

13. It should be noted at this point that the applicant's request does not involve a request under section 6(2) of the Act. The applicant's request is not for a limited bargaining unit, but rather for an appropriate unit under the Board's general power to determine the appropriate unit under section 6(1). Furthermore, the applicant's request is basically for an all employee unit, that is, for what is frequently referred to as an industrial unit of the type which the Board normally finds to be appropriate in other industries.

14. As a result of the craft nature of the construction industry in situations where a craft unit is not appropriate the Board developed a policy in determining appropriate units in the construction industry in terms of the various trades affected by the application; the normal rule being to describe the appropriate bargaining unit in terms of the trades that worked on the date of the making of the application. There

are a number of reasons for this rule, perhaps the major one being simply a recognition of the trade organization of the construction industry. Thus, if the Board were to find an all employee unit appropriate at some later date when another trade commenced working at the job site that trade would be barred by a previous "all employee" certification. Thus, for example, if the Board determines a unit as being "all employees of an employer" rather than "all carpenters and labourers of an employer", at some later date if bricklayers were hired, the bricklayers would be prevented from applying for certification by their usual bargaining agent where the existing certification is described in terms of "all employees". However, if the existing certification refers only to carpenters and labourers then the bricklayers would be able to apply through their normal craft unit. There are, of course, other problems in describing a unit in terms of all employees rather than in terms of various trades particularly where one trade union seeks to displace another trade union.

15. It should perhaps be pointed out that not only is the trade union activity in the construction industry organized along craft bases, but this craft structure is frequently reflected in the way employers arrange their businesses in the construction industry. The result is that the construction industry has a number of craft employers who only hire employees engaging in one of the various crafts in the construction industry. Such contractors are frequently referred to as subcontractors, but there are also employers in the construction industry who are general contractors who deal with a number of different trades.

16. In the present case the Board heard evidence and undisputed representation of the applicant and the respondent concerning the nature of the work performed by the employees concerned and the manner in which that work is performed in its concrete forming construction operations. For these employers, the employees worked as a crew exercising a combination of technical skills of more than one craft and each member of the crew is required to perform the work of any other member of the crew. Indeed, the applicant suggested that such terms as carpenters, labourers, rodmen and cement finishers were not appropriate in the present case since an individual employee could not be so indentified as he was required to perform any or all of the particular jobs on any given day. It was further argued that this was not the normal situation in the construction industry where such trades can be identified.

17. The applicant argued that on the basis of the evidence before the Board the employees fell within the description of the second exception in section 6(2). Section 6(2) reads as follows:

6.-(2) Any group of employees who exercise technical skills or who are members of a

craft by reason of which they are distinguishable from the other employees and commonly bargain separately and apart from other employees through a trade union that according to established trade union practice pertains to such skills or craft shall be deemed by the Board to be a unit appropriate for collective bargaining if the application is made by a trade union pertaining to such skills or craft, and the Board may include in such unit persons who according to established trade union practice are commonly associated in their work and bargaining with such group, but the Board shall not be required to apply this subsection where the group of employees is included in a bargaining unit represented by another bargaining agent at the time the application is made, or where the group of employees is exercising a combination of technical skills or is required to perform the skills in whole or in part of more than once craft as part of a work crew or team, the other members of which are also required to perform in similar fashion.

Section 6(2) of the Act is itself an exception to section 6(1) in the sense that although the Board may find that an industrial or all employee unit would be the appropriate unit in a particular situation, (where the applicant union meets certain qualifications set out in section 6(2) the Board has no discretion but to find a craft unit requested by the eligible applicant as the appropriate bargaining unit). The subsection contains two exceptions which give the Board the discretion to hold that the craft unit requested is not the appropriate bargaining unit. The first exception involves severance of that craft from a larger unit already represented by a bargaining agent, and the second exception refers to a mixed crew "where the group of employees is exercising a combination of technical skills or is required to perform the skills in whole or in part of more than one craft as part of a work crew or team, the other members of which are also required to perform in similar fashion". Thus, given the facts in the present case the Board would have the discretion to refuse to find that a unit of carpenters is an appropriate unit notwithstanding an application by the carpenters claiming an appropriate craft unit under section 6(2). In such circumstances the applicant argues that the Board in order to consistently interpret section 6 of the Act should apply the test referred to as a test for determining appropriateness under the general provisions of section 6(1). That is, if in these circumstances the Board has the discretion not to find a craft unit, the Board should apply the same criteria to determine the appropriate bargaining unit under section 6(1).

18. It is, however, clear that the argument of the applicant that the bargaining unit should be described in terms of "all employees" rather than in terms of certain trades applies only to the concrete forming operation of an employer. If the employer were to engage in some other type of construction the criteria used to describe the present bargaining unit would not necessarily be present. Accordingly, we propose to accept the second part of the applicant's request as to the proper description of the appropriate bargaining unit and limit the unit to those employees engaged in concrete forming construction. It should be pointed out that this Board has on other occasions used such language to limit a bargaining unit; Frost Steel and Wire Company Limited, OLRB Board File No. 17413-69-R, April 10, 1970, para 6; Panza Bros. Contractors, OLRB Board File No. 570-71-R, June 23, 1972, para 3; United Brotherhood of Carpenters and Joiners of America, Local Union 1747, affiliated with the Carpenters' District Council of Toronto and Vicinity v. Fourmar Drywall (1973) OLRB Rep. 200.

19. Although we are prepared to accept the argument of the applicant in the present case, we are of the opinion that certain observations about the implications of this decision should be made by the Board at this time. The Board has dealt with a number of cases concerning concrete forming in recent years, and these cases have been dealt with on the basis that the traditional craft distinctions were applicable in those cases. Thus, in applications for certification by a council of trade unions organizing specific employees engaged in concrete forming the Board determines appropriate bargaining units in the following manner: "All carpenters and carpenters' apprentices, cement masons and cement masons' apprentices, construction labourers and reinforcing rodmen in the employ of the respondent...". The present series of cases depend to a great extent on the facts which have been put in evidence concerning the work performed by the employees affected by these applications. The bargaining unit in the present case covers all the employees concerned with concrete forming. This includes work that is normally divided into the trades of construction labourers, carpenters, rodmen, cement finishers and operating engineers, if these aspects of the concrete forming are performed by the employer.

20. However, it is necessary to note that the bargaining unit includes all such functions since the bargaining unit is an "industrial" rather than a "craft" unit. To find otherwise would be to allow the applicant to rely on one craft structure of the construction industry to deny the remaining craft structure in the same construction operation. That would be tantamount to allowing an applicant to carve out, from the existing craft structure of the construction industry, what it feels is a new "craft" that it is capable of organizing. Clearly, few things could be less conducive to harmonious relations in the construction industry than such fluid boundaries between what are normally appropriate bargaining units.

21. We are also constrained to point out that the applicant is, in other applications, entitled to a bargaining unit of construction labourers which is consistent with the rest of the construction industry. If the applicant develops a pattern of organizing on the basis of industrial type bargaining units, the applicant may very well be put in the position where the Board would be limited in its determination of the appropriate bargaining unit; that is the applicant might be required to apply for a unit of "all employees" rather than allow the applicant the unfair advantage of having the option of choosing which way it wants to organize in the construction industry.

22. Having regard to all of the above considerations the Board therefore finds that all employees of the respondent engaged in concrete forming on residential building projects in Metropolitan Toronto, the Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman, constitute a unit of employees appropriate for collective bargaining.

23. The Board finds that the applicant is a trade union within the meaning of section 1(1)(n) of The Labour Relations Act.

24. The Board is satisfied on the basis of all the evidence before it that more than sixty-five per cent of the employees of the respondent in the bargaining unit at the time the application was made, were members of the applicant on October 1, 1973, the terminal date fixed for this application and the date which the Board determines under section 92(2)(j) of The Labour Relations Act, to be the time for the purpose of ascertaining membership under section 7(1) of the said Act.

25. A certificate will issue to the applicant.

DECISION OF BOARD MEMBER E. BOYER: April 4, 1974.

1. I dissent in part.

2. I do not accept the representation by the applicant that the work in question is performed by a crew of employees exercising a combination of technical skills of more than one craft. Further, I do not accept the representation that each member of the crew is required to perform the work of any other member of the crew. Nor is it realistic to suggest that the lead hands, or "pushers" who direct the work of other employees, cannot be described as craftsmen exercising a particular craft. Since I cannot accept these representations by the applicant it becomes impossible for me to give effect to the decision of the majority that the appropriate bargaining unit should

be described in terms of "all employees". I am of the opinion that in concrete forming construction the appropriate bargaining unit should continue to be described in terms of the trades performing the work on the site as in units found to be appropriate in the Council of Concrete Forming Trade Unions cases (see paragraph 19 of the majority decision). Although I am aware that a decision such as the majority decision must be made on the basis of the evidence and representations before the Board, it is extremely regrettable in the present case that the interests of trade unions other than the applicant were not made known to the Board in this case. While I am aware of the Board's jurisprudence concerning an interest in Board proceedings this is clearly an example of a case where the Board's determination of an appropriate bargaining unit should be made in some other context rather than of a particular case, for example, a general conference of all interested bodies should be held to determine appropriate bargaining units.

5311-73-R: Canadian Union of Public Employees (Applicant) v. THE BOARD OF PARK MANAGEMENT OF THE CITY OF BELLEVILLE (Respondent).

BEFORE: D. H. Kates, Vice-Chairman, and Board Members A. Main and J.E.C. Robinson, Q.C.

APPEARANCES AT THE HEARING: E. M. Gray for the applicant; J. C. Miller, D. Wright and L. Syre for the respondent.

DECISION OF THE BOARD: April 8, 1974.

. . . .

2. The is an application for certification for a group of employees allegedly employed by The Board of Park Management of the City of Belleville.

3. Counsel for the respondent raised before the Board a question with respect to the legal status of the respondent to be considered an entity for purposes of the instant application. That is to say, the allegation is made that the respondent herein may not be the employer of the employees affected by the instant application. Rather, it is suggested the actual employer is the Corporation of the City of Belleville. The Board of Park Management, it is suggested is merely a department amongst many others created by the said municipal corporation.

4. The Parks Assistance Act R.S.O. 1970 Chapter 337, Section 4(1) empowers the council of any municipality, by by-law, to establish an approved park in the municipality in accordance with that Act and said municipality may acquire by purchase or otherwise real and personal

property for that purpose. And by operation of The Public Parks Act R.S.O. 1970, Chapter 384 Sections 1 and 83 provide for the procedures by which a by-law in accordance with that Act may be adopted by municipal council with respect to the creation of a Board of Park Management whose purpose would be to carry out the objectives of the Act. And more particularly by operation of section 1(7) when a by-law creating said Board is repealed "every officer and employee of the Board of Park Management becomes a municipal employee and continues as such until removed by the council, unless his engagement sooner terminates".

5. And in accordance with The Department of Municipal Affairs Act R.S.O. 1970 Chapter 118 section 1 "municipality" means the corporation of a county, city, town, village, township or improvement district and includes a local board, commission or other local authority exercising any powers with respect to municipal affairs or purposes..." And "local board" means "a school board, public utility commission, transportation commission, public library board, board of park management, local board of health, board of commissioners of police, planning board or any other board, commission, committee, body or local authority established or exercising any power or authority under any general or special Act with respect to any of the affairs or purposes, including school purposes, of a municipality or two or more municipalities." And, as aforesaid, the powers and duties of the Board of Park Management is outlined under the Public Park Act (Supra).

6. Having regard to the provisions of the above enactments, the Board is satisfied that the respondent herein is a legal entity for purposes of the instant application and more particularly is the employer of the employees affected by the instant application.

. . .

12. A certificate will issue to the applicant.

4442-73-M: METROPOLITAN SEPARATE SCHOOL BOARD (Applicant) v. Canadian Union of Public Employees and its Local 1328 (Respondent).

BEFORE: D. H. Kates, Vice-Chairman, and Board Members O. Hodges and J.E.C. Robinson, Q.C.

APPEARANCES AT THE HEARING: N. MacL.Rogers, Q.C. for the applicant; W. A. Acton and M. Befrene for the respondent.

DECISION OF VICE-CHAIRMAN D. H. KATES AND BOARD MEMBER O. HODGES:
April 8, 1974.

1. This is an application under section 95(2) with respect to the question as to whether Miss Lynda Thomas, classified by the applicant as a Secretary 2, is an employee for purposes of the Act.
2. Counsel for the applicant argues that Miss Thomas is not an employee in the bargaining unit because she exercises managerial functions and is employed in a confidential capacity in matters relating to labour relations within the meaning of section 1(3)(b) of the Act.
3. Miss Thomas is secretary to Mr. A. J. Barone Assistant Supervisor of the Planning and Development Department of the applicant Board. As a Secretary 2 her primary function is to assist Mr. Barone. In this regard, she types reports and correspondence, takes dictation, screens telephone calls and assumes sundry clerical and filing responsibilities.
4. The applicant Board for administrative purposes is divided into three departments; namely, management, property and finance, and planning and development. Business decisions relevant to each department are prepared, organized and resolved by departmental personnel. These decisions are then referred to a body of persons known as the Administrative Council for further discussion and deliberation. The Administrative Council is composed of department heads and other executive personnel engaged by the Board. After matters are processed through Administrative Council they are referred to a trustee committee for further processing before being dispatched to the Board itself for final resolve.
5. At each level in the hierarchy of this decision making process, meetings are scheduled, agendas prepared, minutes taken and reports kept with respect to the matter of particular concern at the moment. All of which are typed, prepared, distributed, copied, processed by office personnel in the employ of the Board.
6. Mr. Barone is a department head with respect to Planning and Development and as such would attend meetings relevant to each department generally and his department particularly. In her capacity as secretary to Mr. Barone, Miss Thomas would prepare, receive, distribute and file the documents adverted to in paragraph #5 herein. It is quite clear, however, that she does not attend any of the meetings of the various committees and councils for the express purpose of taking notes of the matters that would be discussed. To the extent Miss Thomas would be exposed to confidential information as alleged it would be in light of her contact with these documents. Furthermore it is quite clear from the evidence contained in the Examiner's Report that Miss Thomas would have access to particular documents that would pertain to matters relating to labour relations. In this regard, the

Board refers specifically to portions of the report; At p. 2 of the Report Miss Thomas indicated;

10. She said the confidential information and private matters could be negotiations that are being held between the Board and the union, such as salary negotiations.
11. She said it was not her job to read the information, but she must collate the agendas and prepare them for Mr. Barone. When doing this she can see and read them when putting them together. Therefore, she has access to information on salary negotiations between the Board and the union.

And at p. 9;

65. She also receives a statement on the progress of negotiations, between the union and the Board. She has access to these statements and she has read them. She said it was not her duty to read the reports but they are there and she has access to them.

And in the examination of Mr. Barone at p.14;

100. He said that the Finance reports and drafts cover the proposed budget. The Finance Department receives reports on the state of negotiation reports. The Finance Department deals with proposed adjustments in salaries. Miss Thomas is not expected to read these reports, however, she has access to them and she can if she wishes.

And at page 15;

101. Asked, does he know if she does read these reports, he said "I know she files them away and has access to them, she must look at these reports to put them in their proper files, she may not read the complete report but she would scan it." He would not say for certain if she reads the whole report."

And at page 15;

105. Asked, if the Board Committee meets in public or private, he said both. Any rules, re:

personnel matters are dealt with in private and labour relations reports are dealt in private, proposed salary adjustments are private. He said, the Board agendas are distributed to himself or Miss Thomas and put together for use of the Department.

107. He said that material contained in the reports referring to Planning and Development and anything he wishes to keep dealing with other agendas, he or Miss Thomas would sort and separate material that he would need for reference, is kept in a binder or a personal file and the others would be thrown away.

(emphasis added by the Board).

7. It appears from the foregoing that Miss Thomas does have access to confidential information pertaining to labour relations. Nevertheless, the issue before the Board is whether Miss Thomas is employed in a confidential capacity in matters relating to labour relations. In this regard she works in the planning and development department and would only incidentally be exposed as aforesaid to labour matters. She does not attend meetings where personnel matters are discussed nor is exposure to classified or "private" information an integral part of her job function. The Board refers to the underlined portions of the evidence adduced before the Examiner in support of this finding. The most telling information was provided by the witness when she said that "it was not her job to read the information" pertaining to negotiation matters and that "it was not her duty to read the reports but they are there and she has access to them." And further Mr. Barone stated that she "is not expected to read these reports, however, she has access to them and she can if she wishes."

8. It seems to this Board that if the applicant's office procedures are so lax as to permit employees access to confidential information those employees (who have such access) should not thereby be deprived of rights of representation for collective bargaining purposes. In no manner is Miss Thomas specifically directed to read or use the materials that are characterized as being confidential. Furthermore, the Board discerns from the evidence of Mr. Barone that Miss Thomas' access to this information could be quite easily controlled. For example, he stated that..."the Board agendas are distributed to him or Miss Thomas"...and that..."he or Miss Thomas would sort and separate material that he would need for reference..." In short, there is nothing to indicate in the evidence to suggest that the duties performed by Miss Thomas require as an integral part of her job function exposure to confidential information relating to labour relations.

9. In order that this decision be not misunderstood the Board stresses that the words "employed" as used in S1(3)(b) must be rendered

the meaning the Legislature intended. Had Miss Thomas as part of her duties and responsibilities, attended meetings where union management negotiations were discussed this Board would have no misgiving in excluding her from the bargaining unit. That is to say, such exposure would be integral to her job function. There must be "a regular material involvement" in matters relating to labour relations to justify exclusion from the bargaining unit (see; Falconbridge Nickel Mines Ltd. OLRB M.R. September 1966 379 at p388-9). For example, persons employed as accountants who prepare financial statements and attend management meetings, (see; Burns and Company Ltd. OLRB M.R. April 1965 1); or personnel stenographers and plant nurses who as a necessary incident to the performance of secretarial or nursing duties have access to personnel files (see; Canadian Motor Lamp Company Case OLRB M.R. May 1969 189; Canadian Filters Limited Case OLRB M.R. April 1967 36); and "technical advisers" such as time study technicians who require information derived from confidential files to perform their duties, (see; Boyles Industries Ltd. OLRB M.R. March 1971 111; Canadian Acme Screw and Gear Limited Case OLRB M.R. February 1967 873) have been held by the Board to be persons who are employed in a confidential capacity relating to labour relations!

10. The Board also finds that Miss Thomas does not exercise managerial functions within the meaning of section 1(3)(b) of the Act. The evidence as contained in the Examiner's Report indicates that in isolated instances she would advise Mr. Barone with respect to hiring. But in answer to the question as to whether her advise was effective, Miss Thomas stated; "...he respects what I say and he would give me a fair trial, but whether or not he would go along with me is hard to say." In all other matters such as firing, granting time off, assigning work, recommending promotion or demotion, Miss Thomas exercises no managerial responsibility.

11. It therefore follows from the aforesaid that Miss Thomas is an employee for purposes of the Act and the Board so finds.

DECISION OF BOARD MEMBER J.E.C. ROBINSON, Q.C.: April 8, 1974.

I am in agreement with the majority that Miss Lynda Thomas does not exercise managerial functions within the meaning of section 1(3)(b) of The Labour Relations Act.

I am not in agreement, however, with the finding that Miss Thomas is not employed in a confidential capacity in matters relating to labour relations.

The problem, I agree, is dependent to a large extent, on the subjective view that persons reading the Examiner's Report place upon the testimony contained therein. I say this because the testimony is riddled with inconsistencies.

The majority has quoted certain portions of such report and although it has found that Miss Thomas has access to confidential information pertaining to labour relations, it finds that Miss Thomas is not employed in such confidential capacity. The majority says that the most telling information is that it is not her job to read the confidential information or reports, and on this, the majority bases its finding.

Reference is now made to the portions quoted from the Examiner's Report by the majority.

One must quare how Miss Thomas is able to "collate" the agendas which involve information on salary negotiations between the Board and the union without reading such information. It is a specious argument to say that while part of her employment is collating such agendas, she can do so without reading them.

Similarly she receives a statement on the progress of negotiations between the union and the Board. While she says it is not her duty to read these reports, why indeed would she receive them if it was not part of her employment to receive such reports and read them?

And again, while part of her duties are to file reports dealing with budget and the state of negotiations, one wonders how she is able to perform such duties without reading such reports.

As mentioned heretofore, the report is filled with such inconsistencies in testimony.

In my opinion, one is only able to conclude that if she is performing the duties contemplated of her in her employment, she is employed in a confidential capacity in matters relating to labour relations and should be excluded from the bargaining unit.

I would so find.

3821-73-U: Federation of Children's Aid Staffs (Complainant) v. CATHOLIC CHILDREN'S AID SOCIETY OF METROPOLITAN TORONTO (Respondent).

BEFORE: Frank V. Boscariol, Vice-Chairman, and Board Members P. J. O'Keefe and J.E.C. Robinson, Q.C.

APPEARANCES AT THE HEARING: Maurice A. Green and Wendy Estrin for the complainant; A. P. Tarasuk, R. Arellano and W. Brennan for the respondent.

DECISION OF THE BOARD: April 9, 1974.

1. This is a complaint filed under the provisions of section 79 of The Labour Relations Act wherein the complainant alleges that the aggrieved person, Miss Carmelita Lawlor, has been dealt with by the respondent contrary to the provisions of section 58(a) of the said Act.

2. The evidence discloses that Miss Lawlor commenced employment with the respondent in its medical department on January 17, 1967, where in her original capacity as a registered nurse, she was primarily engaged in assisting physicians at clinics conducted for the purpose of examining children coming under the care of the respondent society. Miss Lawlor was the last of the four nurses to be engaged in this regard and she received her training from her immediate supervisor Miss Kelly, the person primarily responsible for initially setting up this department. Much of the evidence adduced in these proceedings was directed towards establishing whether or not Miss Lawlor's functions in this respect could be characterized as somewhat more than merely "clinical" such that her activities overlapped into the area of social worker. Having regard to the evidence, we are satisfied that although Miss Lawlor's activities generally bore some overtones of social work, she nevertheless, while retained in the medical department, essentially performed in a nursing capacity somewhat akin to that of a nurse working in an office of a private practicing pediatrician. Although at all relevant times she was classified as a "Social Worker #1, we are satisfied that such a classification was not descriptive of her actual duties within the medical department but rather was merely utilized by the respondent for salary and benefits purposes.

3. The evidence also discloses, that for various reasons, the respondent experienced a drastic reduction by the spring of 1972 in the number of children coming under its auspices which necessitated a substantial re-organization of operations. As a result, twenty-two positions in the respondent's staff became redundant, one of these being a nurse position in the medical department. There is no suggestion in these proceedings that the selection of Miss Lawlor as the redundant person in this regard was based upon any other reason than the fact that she happened to be the junior nurse working in the medical department at the time. However, a temporary arrangement to retain Miss Lawlor's services was subsequently implemented by the respondent. The changes in her duties are set forth in a memorandum dated June 22, 1972, (Exhibit #4) which is reproduced herein as follows:

"As a result of a meeting on Wednesday, June 14th, involving Mrs. Griffith and Mr. Ken Macdonald of C.P.R. (Child Placement Resources) and Miss T. Kelly and Mr. A. Sherlock of Special Services, the following agreement was reached.

- 1) That Miss C. Lawlor of the Medical Department will work with Mrs. G. Gallacher of Institutional Services of C.P.R.
- 2) She will work with Mrs. Gallacher for two or three days a week. (Arrangement to be flexible and to be set up by Miss T. Kelly and Mrs. J. Griffith to their mutual satisfaction.)
- 3) This arrangement will be for a period of 2 - 3 months, i.e. July - September inclusive, but with the condition that it will be reviewed by both interested parties at the end of August.
- 4) Miss Lawlor will act as Social Worker for Kinder Care, Darcell Nursing Home and the Schuster Home.
- 5) During the duration of this arrangement, Miss Lawlor will continue to be an employee of the Medical Department and will be supervised by Miss T. Kelly while working in the Medical Department and by Mrs. G. Gallacher while working for Institutional Services."

4. For reasons that are not readily discernible from the evidence, it would appear that there never was an official review of this arrangement at the end of August as stipulated in Item #3 of the said memorandum. Rather, Miss Lawlor was generally retained in this dual capacity beyond this time until April 3, 1973, when she was given a special temporary assignment in the respondent's library for approximately five weeks prior to her termination.

5. As was the case with Miss Lawlor's duties as a nurse in the medical department, much of the evidence as adduced in these proceedings was directed towards establishing whether or not her part-time assignment in Institutional Services, which involved generally dealing with severely mentally retarded children at the Kinder Care, Darcell and Schuster Homes, fell within the realm of a social worker. She is specifically described as such in Item #4 of the said memorandum reproduced in Paragraph #3 herein. Having carefully reviewed the totality of the evidence relating to Miss Lawlor's activities in Institutional Services, there can be no question that some of her duties in this regard could be characterized as falling within the field of a social worker. However, in Miss Lawlor's case, it would appear that her "case load" (even assuming that we are justified in utilizing this

term in the circumstances) was generally restricted to retarded young children and infants. In this regard, we find that her duties were more in the nature of a liaison as between these homes and the respondent. In the result, and aside from the fact that Miss Lawlor did not have a degree in social work, we are not convinced even on the basis of her past work experience alone, that she could have qualified for any of the social work positions as posted by the respondent at the relevant times. Having carefully reviewed the evidence as adduced in this regard, we are not satisfied that Miss Lawlor possessed the required qualifications and background to adequately perform as a full-time social worker in the Bigelow School vacancy created as a result of the subsequent re-organization of operations affecting Institutional Services. We note that this position which was posted by the respondent on or about November 20, 1972, called for a person having experience in a "mixed case load" involving, inter alia, emotionally disturbed children - an area in which Miss Lawlor had relatively little familiarity. With respect to the Riverdale position, we are not unmindful of the testimony of both Mrs. Danylak and Miss Swiencicki as adduced by the complainant to the effect that in the spring of 1973, they were prepared to review Miss Lawlor's file for an anticipated vacancy in their department regarding a social worker position with a child care work load. The gist of their testimony is that they would have interviewed Miss Lawlor for this position despite the fact that she did not possess the stipulated Master's degree, in social work (M.S.W.). The fact, however, that such an interview did not subsequently materialize is not, in our opinion, the fault of the respondent as neither Mrs. Danylak nor Miss Swiencicki, as required by the respondent's well-established procedure in this area, made a specific official request to the personnel department for Miss Lawlor's file. This would have had the effect of setting in motion the necessary pre-requisites to such an interview.

6. Dealing with the question of union activity, Miss Lawlor's evidence is that initially she acted as the representative of the psychology and medical departments for an informal organization of the employees known as Staff Association. Sometime in 1971, a movement towards unionization began amongst certain of its members. In this respect she had volunteered to serve upon a committee, (officially known as the Bargaining Unit Committee for the Catholic Children's Aid Society) composed of certain members of Staff Association. This committee was set up in order to explore the possibility of Staff Association embarking into the area of formalized collective bargaining with the respondent. A report to this effect was circulated amongst all staff including managerial personnel, on or about March 9, 1972, (Exhibit #1) and was followed by a notice dated March 24, 1972, (Exhibit #3) advising that a referendum on the question would be held on March 30, 1972. By Memorandum dated March 29, 1972, (Exhibit #2), Mr. Ward Markle, the Executive Director of the respondent, expressed on behalf of the respondent, his disapproval concerning any such

"legalized and formal arrangement." Despite this opposition, according to Miss Lawlor, the results of the referendum indicated that the members of Staff Association were in "favour of a bargaining unit." In August, voluntary recognition was requested but was denied by the respondent. She further testified that she was subsequently nominated as Treasurer on the executive of Staff Association and on December 4, 1972, she was elected to that position at which time she publicly spoke in support of a "pro bargaining unit" platform. She stated that following a meeting between Paul McIntosh, the president of Staff Association and Mr. Markle on January 9, 1973, a decision was then made to apply for certification "using Focas (e.g. an acronym for the complainant union) as the vehicle." On April 21, 1973, Focas filed a formal application for certification before this Board. (See Board File No. 3642-73-R). Miss Lawlor also stated that she was active in signing up employees during the organizational campaign, and during the course of which, she had acted as membership chairman. It is the submission of the complainant that at least one of the aforementioned union activities played a role in the respondent's decision to terminate Miss Lawlor on May 8, 1973 and in the alternative, that she was the "weak link" as far as the respondent was concerned, in the chain of personnel who were identified with the complainant.

7. The testimony of Mr. William Brennan, is to the effect that he became Director of Personnel for the respondent in January of 1972 and that he reported directly to Mr. Markle the Executive Director. He stated that as a result of a manpower study which was completed in December of 1972, it became evident that the Society had become over-staffed such that it was decided to reduce twenty-one positions, three of which were in Institutional Services. A nurse position was also to be reduced, but he stated that there were sufficient funds in the budget to cover that position until June of 1973. Recruiting had already been suspended from September of 1972 and a "job freeze" went into effect at this time. It was hoped that any termination of personnel could be avoided on the basis of attrition. It would appear that there was also an abnormally high turnover of staff at this time. It was at this point, that according to Mr. Brennan, the respondent began to institute a policy of deploying the redundant staff elsewhere within the Society, rather than terminating them. He became aware of the redundancy in the medical department in May of 1972, which occurred at about the time that the Society's training program had been "shelved" because of the overabundance of qualified personnel possessing either or both a bachelor's and master's degree in social work. When directed to Paragraph #4 of Exhibit #4, he stated that Miss Lawlor's "three fifths" part-time assignment in Institutional Services was specifically structured to her abilities and that there were no great expectations regarding her performance in that job. On cross-examination, he conceded however, that Miss Lawlor was performing some social work functions while retained in that position.

8. Mr. Brennan further testified that he had arranged for meetings with Mr. MacDonald, Mrs. Griffith and Mrs. Gallagher on January 24, 1973, when he had learned that Miss Lawlor's part-time position in Institutional Services in effect, was to become absorbed in a new full-time position as a result of a proposed departmental realignment. (In this regard, see Paragraph #5 herein). He stated that his impression up to this time was that Miss Lawlor was doing "a full time Institutions workers job" and that in Miss Lawlor's opinion, she had been promised this full time position. He stated, however, that Mrs. Griffith assured him subsequently that this was not the case. Her views in this respect and to which Mr. Brennan relied upon in his subsequent actions, are extensively set out in Exhibits #38 and #39 filed with the Board. These were in effect that Miss Lawlor's tasks, as delegated to her by Mrs. Gallagher, were of a fairly routine nature such that her duties in that position were more akin to those of a "case aide" rather than those of a social worker. Mr. Brennan further testified, that by the end of January 1973, matters were left on the basis that Miss Lawlor would continue her work in Institutions so long as she proved helpful and that the Society would continue in its efforts towards recruiting a suitable applicant to fill the new position. Mr. Brennan further testified that he subsequently advised Miss Lawlor in February of 1973, of the situation and at which time she reiterated her interest for a "social work position with a child care case load." According to Mr. Brennan, Miss Lawlor nevertheless also did indicate her willingness to work in any capacity in any part of the Society. In this regard, he further testified that he subsequently advised Mrs. Joan Brown, Supervisor of Boys Residences, of Miss Lawlor's availability upon being notified of an opening for a child care worker in this department.

9. Mrs. Brown's evidence in this respect is that upon discussing Miss Lawlor's candidacy for this permanent position with Mr. Brennan and being advised of her qualifications, she requested Miss Lawlor's file. Upon reviewing her file and satisfying herself upon Miss Lawlor's suitability, she agreed to have an initial interview with her which took place on February 22, 1973. She further indicated that approximately one week following such interview, Miss Lawlor advised her that she was not interested in the position, saying that "child care work is not my bag". Substantial evidence was presented to this Board concerning the contents of those discussions which transpired between Miss Lawlor and Mrs. Brown during the course of that interview. Miss Lawlor's testimony in this regard is to the effect that the position as described to her was of a domestic nature and as such essentially "house-oriented" wherein the physical care of the child through a female role on the part of the worker was emphasized. Mrs. Brown in her evidence on cross-examination, denied using the term "domestic" at this time. Having carefully reviewed the totality of the evidence as adduced in this regard, we are satisfied that Mrs. Brown did in fact utilize the term "domestic" to describe the position during the course of this interview. In this regard, we do not disagree with

Miss Lawlor's conclusion that the domestic side of the job was in fact emphasized and that the position as described would represent a significant change to that work which Miss Lawlor had heretofore been doing. Be that as it may, we are nevertheless satisfied that Mrs. Brown was impressed by Miss Lawlor's qualifications and that she would have been genuinely interested in pursuing the matter further had Miss Lawlor not subsequently expressed her disinclination for this work. Even if we were not to regard the acceptance by Miss Lawlor of this position in child care work (a discipline now recognized in its own right), as a promotion, it certainly, having regard to all of the evidence as adduced did not, in our opinion, represent a demotion for Miss Lawlor and indeed might very well constitute a stepping-stone to further advancement within the society.

10. Mr. Brennan further testified that when it became apparent that Miss Lawlor's services were no longer required both in the medical department and in Institutional Services, he had arranged a special assignment for Miss Lawlor to work on a project in the library commencing on April 3, 1973. He stated that he had made inquiries with various department heads and branch directors concerning possible job openings for Miss Lawlor's deployment and that he had formally met with certain representatives of Staff Association to discuss her plight on March 27, 1973. He raised the matter at the planning and co-ordinating meeting of the respondent on April 10 and again at an administration committee meeting on April 17. All of his efforts towards Miss Lawlor's deployment, however proved fruitless. A last ditch attempt in early May to place her at Riverdale suffered the same fate. It was at this point that he had concluded that "there were no positions on the horizon" for Miss Lawlor. Accordingly, my memorandum dated May 8, 1973, (Exhibit #14) he informed Miss Lawlor as follows:

"I regret to advise you that effective on this date your employment by the Society is terminated.

As you know, your services as a nurse in the Medical Department have not been required for some time, and I have been endeavouring to find a position in the Agency suited to your interest and experience. Transfer to a Child Care position was not of interest to you and your work in recent months has therefore consisted of temporary assignments. It is not possible to continue these assignments indefinitely, and discussion with Branch and Service Directors revealed no prospect of a

vacancy in the foreseeable future suitable to your qualifications.

On behalf of the Society, I wish to express appreciation for your capable and valuable services as a nurse over the past six years. I regret that I have been unsuccessful in facilitating your transfer thus far, and it is my intention until year-end, to submit your application to Branch and Service Directors for all positions which become vacant and meet the specifications you have stated."

11. Much of the evidence as led by the complainant in these proceedings was directed towards establishing an anti-union animus on the part of the respondent. There can be no question, having regard to the correspondence filed with the Board dated March 29, 1973 (Exhibit #2) that Mr. Markle, on behalf of the respondent, voiced disapproval concerning any legalized and formal arrangements leading towards collective bargaining. It is also clear that these representations were made the day prior to the date set for the calling of a referendum amongst the employees concerning the question as to whether Staff Association should embark into the area of collective bargaining. The subsequent denial of formal voluntary recognition to Staff Association is in itself cited as an example by the complainant, of the respondent's negative attitude in this regard. Further examples are suggested in Miss Lawlor's evidence where she stated that Miss Kelly has asked her to relinquish her position as departmental representative in Staff Association. Miss Kelly in her testimony specifically denied making such a statement. Miss Lawlor further referred to the occasion of the exit interview she had with Mr. Brennan, who in answer to her various questions in this area, expressed the view that "he could not see the union as a workable thing in the agency setting" and that he queried the fact that "the employees were signing over their rights to Wendy Estrin, the Focas representative who didn't even work here." Mr. William Lee's testimony in this regard is that he had received a veiled threat from Mr. Markle as a result of his participation as chairman in a report dated March 9, 1972 (Exhibit #1) issued by the "Committee Studying Bargaining Unit". Mr. Paul McIntosh, the chairman of Staff Association, stressed the fact that Mr. Markle in his memorandum dated July 3, 1973 (Exhibit #21) threatened him for allegedly violating the Society's operating document when he had issued, without prior approval, a progress report to total staff concerning the pending certification proceedings. Mr. Peter Bolton, the president of Focas, stated that he was admonished both by his branch head, Miss Veronica Fagan and Mr. Markle, for allegedly violating the Society's statement on press relations when he had given an interview to certain reporters in March of 1972 at about

the time of the referendum. He admitted, however, that he had been misquoted in the resulting Globe & Mail article which had case dispersions upon an innocent third party. In this regard, we find no harrassment in the respondent's subsequent attempts to have Mr. Bolton obtain a retraction.

12. We are not asked in these proceedings to pass judgment upon the apparent acrimony existing between the representatives of the complainant union Focas or, for that matter, with Staff Association. Likewise, we are not asked in these proceedings to rule upon the conduct of the various representatives of Focas or Staff Association. The sole question before this Board is to determine whether the complainant has, on the balance of probabilities, established that Miss Lawlor's union activities played a role in the respondent's decision to terminate her. There can be no question that the respondent opposed the unionization of its staff. It took active steps to express this opposition and it would have probably preferred that the staff consider the establishment of a council as an alternative means of resolving problems of mutual interest. In all of the circumstances of this case therefore, we find it incumbent upon the respondent to provide the Board with a credible explanation for its dealings with Miss Lawlor which ultimately led to her termination.

13. Having carefully reviewed the totality of the evidence as adduced in these most protracted proceedings, and taking into account the representations of counsel thereto, we find that such a credible explanation has been forthcoming from the respondent in these proceedings. In this regard, we are satisfied that Mr. Brennan had done everything reasonably possible in the circumstances to effectively implement the respondent's policy (Exhibit #7) of deploying staff without a reduction in complement. In Miss Lawlor's case, the evidence discloses that he even went so far as to exceed his authority when Mr. Brennan assigned her to the library. The fact that he ultimately failed in this endeavour, we attribute essentially to the high standards as set by the various department heads for the available vacancies existing during a period of time when there was an overabundance of qualified candidates with social work degrees. Mr. Brennan's task in this regard became even more monumental when we consider that he had been only recently hired as Personnel Director and that he was immediately confronted with the normal problems associated with a major organizational change in the respondent's operations. Accordingly, we find that neither Miss Lawlor's union activities, nor the fact that she may have been the most "vulnerable" person associated with the complainant, played any role in the treatment accorded to her by the respondent and which had culminated in her termination.

14. In the result, the Board finds that the complainant has failed to satisfy the onus cast upon it in these proceedings and accordingly the complaint is dismissed.

5286-73-R: United Steelworkers of America (Applicant) v. UNITED ASBESTOS INC. (Respondent).

BEFORE: D.E. Franks, Vice-Chairman, and Board Members O. Hodges and J.E.C. Robinson, Q.C.

APPEARANCES AT THE HEARING: A.E. Munro and R. Hunter for the applicant; R.J. Drmaj, R.J. Merrill and D.C. Cook for the respondent.

DECISION OF THE BOARD: April 11, 1974.

. . .

2. The applicant has applied for certification as bargaining agent for a unit composed of all employees of the respondent at its mine in midlothian Township. There appears to be some problem with this geographical description in that part of the operation, namely the camp site is located in an adjacent Township, Doon Township. There is no dispute however that the two sites are part of the one operation which forms the subject matter of this application. The Board therefore finds that all employees of the respondent in the Townships of Midlothian and Doon, save and except shift bosses, foremen, persons above the rank of shift boss or foreman, office and sales staff, security guards and students employed during the school vacation period, constitute a unit of employees of the respondent appropriate for collective bargaining.

3. Counsel for the respondent submits that the present application is premature since the respondent has a planned programme for the build-up of its work force within a specified period. This submission is supported by evidence adduced by the respondent concerning the proposed build up. The evidence which was not disputed is that at present there are approximately twelve employees concerned with stripping the overburden and constructing dykes. In September 1974, it is expected that the mill buildings will be completed and that the equipment installation will commence. This will result in the gradual increase of a one shift operation of some seventy men. It is expected that in the summer of 1975 the mill will be in full operation and be employing some one hundred and seventy-five to one hundred and ninety men. Although no evidence was given to the number of classifications expected to be employed when the mine and mill is operating completely, the Board is satisfied that the respondent has a planned programme to increase its work force and that there is a real probability that the increase will take place within a specified period.

4. In certification applications in the past, where the Board has been satisfied that a substantial and representative number of employees have not been employed by the respondent company as of the date of application and that the employer concerned has a planned programme for build-up

of its work force within a specified period, the Board has postponed the making of any final determination on the application until a future date. The Board has required the employer to report periodically on the number of persons in its employ in the bargaining unit and at such time as more than fifty per cent of the anticipated complement has been hired, it has directed the taking of a representation vote among the employees in the bargaining unit. In the event that the build-up does not progress as planned, the Board will consider the membership position of the applicant as of the date of the making of the application (see McCord Corporation Case OLRB M.R. June 1965 p. 203; RCA Victor Company, Ltd. Case OLRB M.R. January 1967 p. 793; Canron Limited Case OLRB M.R. September 1969 p. 750; The International Nickel Company of Canada Limited Case Board File No. 3329-72-R March 1973).

5. The Board accordingly directs the respondent to report to the Board periodically on the number of persons in its employ and their job classifications. The first report is to be made on July 1, 1974, and every fifteen days thereafter until the Board otherwise declares.

5399-73-R: Graphic Arts Union, Local 669, Subordinate to the International Printing and Graphic Communications Union (Applicant) v. THE SPECTATOR, A DIVISION OF SOUTHAM PRESS LIMITED (Respondent).

BEFORE: D.E. Franks, Vice-Chairman, and Board Members J.D. Bell and O. Hodges.

APPEARANCES AT THE HEARING: L.C. Arnold, Purdy Churchill and Irwin Cole for the applicant; T.W. Sargeant and J.S. Thomson for the respondent.

DECISION OF THE BOARD: April 11, 1974.

1. The applicant in the present case has not previously been found to be a trade union within the meaning of The Labour Relations Act. Notice of this was given to the applicant and at the hearing the applicant sought by adducing evidence to prove its status as a trade union within the meaning of section 1(1)(n) of the Act. Before dealing with the evidence presented to the Board it is desirable to state the basis upon which the applicant claims to be a trade union. The applicant local was a chartered local of the International Printing Pressmen and Assistants' Union of North America (hereinafter referred to as the Printing Pressmen Union). As a result of a merger between the aforementioned Printing Pressmen Union and the International Stereotypers' and Electrotypers' Union of North America (hereinafter referred to as the Stereotypers' Union), the applicant claims to be a chartered local of the International Printing and Graphic Communications Union, the organization created by the merger of the Printing Pressmen Union and the Stereotypers' Union.

2. The Board heard the evidence of Mr. John Steel a Vice-President of the International Printing and Graphic Communications Union, who prior to the merger was a Vice-President of the Printing Pressmen Union. This witness identified a copy of a letter of intent dated October 30, 1972, which sets out the agreement between the two parent unions concerning a proposed merger. As a result of that letter of intent a merger agreement between the Printing Pressmen Union and the Stereotypers' Union dated October 1, 1973, was drawn up. The name of the merged organization was to be the International Printing and Graphic Communications Union. The agreement provides that the constitution of this new organization would be the constitution of the Printing Pressmen Union as adopted in September of 1972, and as amended by referendums of the Printing Pressmen Union and the Stereotypers' Union.

3. Pursuant to the constitutions of both the Printing Pressmen Union and Stereotypers' Union referendums were conducted with respect to the proposed merger of the two unions to form a new union. Mr. Steel reported the results of these referendums. They are as follows:

The Stereotypers' Union in a referendum
dated April 26, 1973, voted 5,498 to
1,610 in favour of the merger.

The Printing Pressmen Union in a referendum
dated June 27, 1973, voted 26,492 to
15,092 in favour of the merger.

Mr. Steels also identified a copy of the International Printing and Graphic Communications Union constitution dated October 1, 1973.

4. The Board is therefore satisfied on the basis of the evidence before it that on October 1, 1973, by reason of a merger of the International Printing Pressmen and Assistants' Union of North America and the International Stereotypers' and Electrotypers' Union of North America, the International Printing and Graphic Communications Union became a successor of the two merged trade unions.

5. The merger agreement referred to above provides in Article XI as follows:

XI.

LOCALS AND OTHER SUBORDINATE BODIES

Charters heretofore issued by the International Printing Pressmen and Assistants' Union of North America, AFL-CIO, and the International Stereotyper', Electrotypers' and Platemakers' Union AFL-CIO, to local unions, councils or conferences are hereby

declared to be charters of the merged organization and the seals now used by such local unions, councils or conferences are hereby declared to be seals recognized as proper, appropriate and lawful seals of the merged organization under its Constitution and Laws for all purposes.

It is thus clear that a local of either the Printing Pressmen Union or the Stereotypers' Union continues as a local of the new International Printing and Graphic Communications Union.

6. The applicant filed with the Board a copy of a charter dated October 25, 1968. It appears that the original charter of Local 669 was issued on April 17, 1948. However, the name of the chartered local was changed to the Graphic Arts Union Local 669 in 1960, and a copy of the charter filed with the Board reflects the name Hamilton Graphic Arts Union Local No. 669 of the International Printing Pressmen and Assistants' Union of North America. The applicant also filed and identified the constitution and by-laws of the applicant local union. The Board therefore finds that the present applicant was a chartered local of the International Printing Pressmen and Assistants' Union of North America and that by operation of the merger referred to above the applicant local is a chartered local of the International Printing and Graphic Communications Union.

7. The Board therefore finds that the applicant is a trade union within the meaning of section 1(1)(n) of The Labour Relations Act.

. . .

12. The matter is referred to the Registrar.

5355-73-R: Brewery, Soft Drink, Distillery, Distributor and Miscellaneous Workers Local 1000 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. DOMINION STORES LIMITED (Respondent).

- and

5356-73-R: Brewery, Soft Drink, Distillery, Distributor and Miscellaneous Workers Local 1000 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. DOMINION STORES LIMITED (Respondent).

BEFORE: George S.P. Ferguson, Q.C., Vice-Chairman, and Board Members A. Main and J.E.C. Robinson, Q.C.

APPEARANCES AT THE HEARING: Harold F. Caley, Mary F. Cornish and Norm Wilson for the applicant; R. Gordon Fry for the respondent.

DECISION OF GEORGE S.P. FERGUSON, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS A. MAIN: April 17, 1974.

. . .

2. The Board is satisfied that the applicant has discharged the onus imposed on it to satisfy the Board that it is a trade union within the meaning of section 1(1)(n) of The Labour Relations Act.

3. Having regard to the agreement of the parties, the Board finds that all employees of the respondent at its retail stores in the Township of Chatham, save and except assistant store manager, persons above the rank of assistant store manager and office staff, constitute a unit of employees of the respondent appropriate for collective bargaining.

. . .

5. In its reply the respondent company indicated that there was a trade union known to the respondent as claiming to be the bargaining agent of or to represent any employees who may be affected by these applications. This trade union is named as General Workers Local 800, International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America and the International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America, AFL-CIO-CLC. Notice of these applications was sent to the aforesaid trade union. However, no person appeared on behalf of this union and the representative of the respondent confirmed at the hearing that there was no collective agreement between the respondent and the aforesaid trade union which covered the employees affected by these applications.

. . .

7. A certificate will issue to the applicant.

DECISION OF BOARD MEMBER J.E.C. ROBINSON, Q.C.: April 17, 1974.

I dissent.

At the outset, I must say that the question of the status of the applicant as a trade union was not contested by the respondent company, nor was any argument directed by it to such question.

I would find, however, based on the absence of certain evidence which, in my opinion, should have been proffered, together with inconsistencies between the evidence presented and the requirements set forth in the Constitution of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, that the

applicant has not satisfied me that its organization is a trade union within the meaning of section 1(1)(n) of The Labour Relations Act.

My finding is not to suggest that the applicant is unable to establish itself as a trade union; it is merely to say that it did not do so at the hearing.

As a result of my finding, therefore, the application must be dismissed.

5432-73-R: Canadian Union of Public Employees (Applicant) v. THE MIDDLESEX COUNTY BOARD OF EDUCATION (Respondent).

BEFORE: George S.P. Ferguson, Q.C., Vice-Chairman, and Board Members A. Main and F. W. Murray.

APPEARANCES AT THE HEARING: W. A. Acton and Paul Senay for the applicant; R. C. Fillion and W. N. Ashby for the respondent.

DECISION OF THE BOARD: April 22, 1974.

1. The respondent alleges that previous to the date of the application it had voluntarily recognized the applicant as bargaining agent for employees affected by this application. The respondent submitted, therefore, that the application was untimely. On October 4, 1973, the respondent through its counsel wrote to a representative of the applicant union for the purposes of confirming that the respondent would voluntarily recognize the union as bargaining agent for either or both of two bargaining units which were then proposed by the respondent in the event that the union could establish that it had evidence of membership or more than fifty per cent of the employees in either or both of the bargaining units as proposed. This letter followed verbal representations made by the applicant union that it enjoyed a majority membership position within the employees of the respondent who were engaged in office and clerical work. An independent check was then completed of the union membership position in accordance with the proposal submitted by the respondent in writing. As a result of this independent check it was found that the applicant union did in fact represent a majority of the employees in the full-time unit of office and clerical employees but the applicant did not enjoy a majority position in the part-time which had been proposed by the respondent. A negotiating meeting was held on February 7, 1974 at which time the applicant union submitted written proposals for a collective agreement. The Board was advised that a further negotiating meeting has now been scheduled for April 23. It is the Board's view that the allegation by the respondent that voluntary recognition has been granted to the applicant union as bargaining agent must be supported by evidence

that there exists an agreement in writing signed by the parties which confirms such voluntary recognition. In fact, the agreement of the parties could be incorporated in a single document or it might be incorporated in an exchange of correspondence. There is no evidence before the Board in this case which could satisfy the above-noted requirement and accordingly the submission of the respondent in respect of the timeliness of the current application cannot be upheld.

. . .

2855-72-R: Canadian Union of Public Employees (Applicant) v. YORK UNIVERSITY (Respondent).

BEFORE: D.E. Franks, Vice-Chairman, and Board Members O. Hodges and F.W. Murray.

APPEARANCES AT THE HEARING: Jack Bird and W.A. Acton for the applicant; Donald F.O. Hersey and D.J. Mitchell for the respondent.

DECISION OF THE BOARD: April 22, 1974.

1. The applicant trade union is seeking certification as the bargaining agent for a group of employees that it claims constitutes an appropriate unit of employees for collective bargaining. The employees in question are some 13 employees employed by the respondent in connection with a sub-post office operated by the respondent for the benefit of the University community. The work performed by these employees ranges from picking up mail at the post office, sorting incoming mail, wicket duties and delivering mail to various departments or buildings of the University.

2. The respondent contends that such a group of employees does not constitute an appropriate bargaining unit and suggests that these employees are properly part of a much larger bargaining unit consisting basically of the office, clerical and laboratory employees of the University. The applicant argues that the unit is appropriate because it forms a tag-end to a bargaining unit of employees which are already covered by a collective agreement. The matter was referred to a Board Examiner to inquire into the community of interest, if any, between the group of employees in question and certain other groups of employees of the respondent. In due course the Examiner issued his Report and the parties have made argument on that Report.

3. The Examiner's Report sets out certain background information relating to the current collective bargaining activities of the respondent. The Canadian Union of Public Employees was certified as bargaining agent for a certain unit of employees on March 1, 1971. The scope of that bargaining unit is as follows:

"All employees of the respondent engaged in maintenance, services, and plant operations, save and except foremen, persons above the rank of foreman, office staff, students employed during the school vacation period, persons regularly employed for not more than 24 hours per week and persons covered by a collective agreement (with two intervening unions)."

It appears that subsequently the parties made a collective agreement which refers to the bargaining unit in the Board's decision of March 1, 1971. However, a dispute arose under that agreement concerning persons claimed by The Canadian Union of Public Employees to be employees in the bargaining unit. This resulted in a grievance and ultimately a decision of an arbitration board dated September 5, 1972. That arbitration decision is part of the Examiner's Report in the present matter and of note is the fact that the dispute brought to arbitration involved some 32 employees in the following classifications: mail drivers, grad-residents caretakers, carpenter Burton auditorium, animal keepers at B.S.B. and Farg, and certain skilled tradesmen employed in certain buildings. The Canadian Union of Public Employees was unsuccessful in its grievance. The arbitration board noted that the bargaining unit was not an all employee bargaining unit but that the unit was a unit of employees described in particular terms. The Board then held that it was clear that the parties had intended to refer to specific groups of employees in that bargaining unit and the present group of employees were not included.

4. The present case must be viewed in the context that there are presently three existing bargaining units described in terms of particular employees at the respondent University. The applicant's case is that the present group is a tag-end to the group of employees which the Board previously certified the applicant for in its decision of March 1, 1971. The respondent's position is that the collective bargaining should not be further fragmented, but there should be only one further appropriate bargaining unit comprising the remainder of the office, clerical and technical or laboratory employees of the respondent.

5. Before dealing with the remaining facts set out in the Examiner's Report it is useful at this point to examine some of the Board's jurisprudence on appropriate bargaining units in Universities. The first major case which dealt with the problem of appropriate bargaining units in Universities is the University of Guelph case, September (1966) OLRB Mthly. Rep. 394. In that case the applicant argued that the appropriate bargaining unit was one all employee unit and the respondent took the position that there should be three appropriate units consisting of trades, maintenance and service employees, office, clerical or stenographic employees, and all

laboratory and technical employees. The Board took the position that there were two units of employees appropriate for collective bargaining:

"First, a unit consisting of office, clerical and technical employees, including laboratory employees; and

Second, a unit consisting of other employees..."

Although that case might be said to be of limited usefulness in assisting subsequent determinations of bargaining units because the applicant in that case had previously represented employees before the institution involved came within the ambit of The Labour Relations Act, it does set an approach which is clearly against the proliferation of bargaining units in Universities.

6. The University of Guelph case was followed by a series of cases dealing with University Libraries. This series of cases starts with the University of Toronto case, February (1969) OLRB Mthly. Rep. 1149 and ends with the McMaster University case, February (1973) OLRB Rep. 102. In the University of Toronto case the Board found on the facts that the University of Toronto Library was in itself a separate and complete institution and therefore the employees in that institution constitute an appropriate bargaining unit. Subsequently, the Board issued a number of certificates for the non-professional employees at University libraries. However, in the McMaster University decision the Board found on the facts of that case that that University library was not a separate institution, but was an integral part of the total University and that a bargaining unit consisting solely of library employees was not an appropriate unit for collective bargaining. The cases dealing with University libraries are not particularly helpful in the present case since the question as to whether the employees involved are part of a separate institution does not arise in this case. However, the University library cases all speak from a background that the Board was conscious of the problem of fragmenting bargaining units in such large and complex institutions as a University.

7. Of particular interest is a case involving a specific group of employees; Queen's University case, March (1972) OLRB Rep. 267. In that case the Board held without giving extensive reasons that a bargaining unit consisting of five persons employed in the public relations department of the University was not an appropriate unit for collective bargaining.

8. We are of the view that it is important at this time to clearly state our concern with the possible fragmentation of collective bargaining in Universities. From a labour relations viewpoint Universities are large

complex institutions and any such institution creates a serious problem for the Board in determining what constitutes an appropriate unit for collective bargaining. In the end the determination of an appropriate bargaining unit must be the result of a careful balancing of the different types of communities of employees against the fragmenting of the bargaining into small groups which would ultimately lead to chaotic labour relations. In this regard we think that the approach which the Board initiated in the University of Guelph case is one that should be continued. That is that the number of appropriate bargaining units should be limited and that office, clerical and technical employees should continue one unfragmented bargaining relationship.

9. Viewed in this light the present case raises the issue of whether the Board should allow further fragmentation of the possible bargaining units at the respondent University. Thus, if the community of interest of the employees with which we are concerned lies with the office, clerical and technical employees of the University, then the bargaining unit suggested by the respondent would be the appropriate one in the present case. On the other hand, for the applicant to be successful in its argument the employees in question would (a) have to have a community of interest relating to the existing bargaining unit, and (b) be the only remaining group of employees who are unorganized and share that community of interest. That way the applicant would establish that the present group of employees are a tag-end to an appropriate bargaining unit.

10. Referring to the Report of the Examiner it is clear from the arbitration case included therein that this is not the only group of employees which the applicant sought to have added to the bargaining unit for which it was certified on March 1, 1971, and that finding alone would dispose of the applicant's argument that its proposed bargaining unit is appropriate. We are, however, not prepared to rest this decision on such a narrow finding. The Examiner's Report indicates that the employees in question share a community of interest not with the maintenance, services and plant operations bargaining unit of the University, but rather, with the office and clerical employees of the respondent University. We are therefore of the view that any appropriate bargaining unit to which the employees affected by this application would properly belong is a much larger unit of office, clerical and technical employees, and it is therefore clear on the basis of all the evidence before the Board that less than thirty-five per cent of the employees of the respondent in the bargaining unit, at the time the application was made, were members of the applicant on November 24, 1972, the terminal date fixed for this application and the date which the Board determines, under section 92(2)(j) of The Labour Relations Act, to be the time for the purpose of ascertaining membership under section 7(1) of the said Act.

11. The application is therefore dismissed.

5367-73-U: Operative Plasterers' & Cement Masons' International Association, Local 48 (Applicant) v. THE INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES, LOCAL 1891 (Respondent).

BEFORE: D.E. Franks, Vice-Chairman, and Board Members H.J.F. Ade and E. Boyer.

APPEARANCES AT THE HEARING: L.C. Arnold, I. Grushka and E. Russell for the applicant; A.M. Minsky for the respondent.

DECISION OF THE BOARD: April 24, 1974.

1. This is an application for consent to institute a prosecution against the respondent trade union. At the hearing in this matter, after certain preliminary arguments by counsel for the respondent trade union, the applicant withdrew its application with respect to an alleged violation of section 67 of the Act. Accordingly, the application as it relates to an alleged violation of section 67 of the Act is dismissed.

2. The applicant also seeks to prosecute the respondent for alleged violations of section 59(2) and section 61 of The Labour Relations Act. By a letter dated April 9, 1974, the respondent pursuant to section 47 of the Board's Rules of Procedure requested certain particulars with respect to the alleged conduct of the respondent trade union. These particulars requested the names of certain persons and also the time when and the place where certain of the alleged events took place. The respondent's request for particulars dealt with seven specific occurrences in the events alleged by the applicant in its original application.

3. By a letter dated April 16, 1974, the applicant replied to the request by the respondent in the form of a letter. The applicant's response to the demands given in this letter sets the time and the place "as in or about the first week of February in Toronto". With respect to the persons about whom the particulars were requested the reference was to "either Joe Muzzo or Ted Matuziak or both". Further, with respect to the general contractor who participated in the alleged events, the name was not even supplied in the particulars. The Ellis Don Limited case, August (1970) OLRB Mthly. Rep. 587 at p. 590 sets out the extent to which a demand for particulars must be satisfied as follows:

The applicant need not set out the evidence upon which it relies, nor need the applicant indentify the witnesses from whom such evidence is to be adduced. However, the applicant must sifficiently describe the actions or omissions complained

of so that the respondent may direct his attention to such matters in order to properly prepare his case.

...

While it may be that the applicant is of the belief that the respondent is fully aware of the exact nature of the events complained of, this fact does not deprive the respondent of his right to receive the statement of material facts referred to in section 47 of the Board's Rules of Procedure, nor does it relieve the applicant of the responsibility to provide a concise statement of all such material facts referred to in section 47, especially where the respondent makes a request for such particulars.

The particulars given fall short of meeting any such test. We are therefore of the view that the applicant cannot be allowed at this stage to lead evidence with respect to the matters on which it has been unable to supply the particulars requested by the respondent.

4. However, if we delete from the material facts alleged by the applicant those upon which it intends to rely as establishing the offences, those allegations for which the properly requested particulars have not been supplied, the remaining material facts discloses no violation of either section 59 or section 61 of the Act, and the application is therefore dismissed.

4493-73-R: United Steelworkers of America (Applicant) v. GULF OIL CANADA LIMITED (Respondent).

BEFORE: Rory F. Egan, Alternate Chairman, and Board Members J. D. Bell and O. Hodges.

APPEARANCES AT THE HEARING: Lorne Ingle for the applicant; R. V. Hicks for the respondent.

DECISION OF RORY F. EGAN, ALTERNATE CHAIRMAN, AND BOARD MEMBER O. HODGES:
April 25, 1974.

1. This is an application for certification in which the respondent takes the position that the persons whom the applicant seeks to represent are not employees of the respondent but are independent contractors. The fundamental question before the Board, therefore, is whether the oil burner servicemen are employees of the respondent within the meaning of The Labour Relations Act.

. . .

3. An Examiner was appointed by the Board to inquire into the lists filed by the respondent and the employment status of the persons engaged in oil burner servicing claimed by the applicant to be employees of the respondent.

4. The parties agreed before the Examiner that a contract made between one McConnell and the respondent was representative of all contracts signed by the twelve oil burner service mechanics with the respondent. The parties further agreed to the following facts: a) The cost of uniforms is split equally between Gulf and the oil burner service mechanics. The upkeep of uniforms is paid for by the service mechanics; b) Audy and Vachon are granted the right to buy their spare parts from sources designated by the company, provided prices remain competitive. The others get their spare parts on consignment; c) Oil burner service mechanics do not participate in any company sponsored benefit plans; d) Subject to the provisions of the contract, the company does not supervise oil burner service mechanics in regard to hours of work, scheduling of work or work performed; e) Oil burner service mechanics are not covered by Workmen's Compensation through Gulf (as stated in the contract) nor does Gulf deduct Income Tax or Unemployment Insurance payments; f) Gulf does not provide oil burner service mechanics with tools nor does Gulf pay for them; g) Business or professional licenses required are not paid for by Gulf.

5. A hearing was held for the purpose of considering the representations of the parties with respect to the Report of the Examiner which is dated December 27, 1973, and all outstanding issues. The parties made their respective representations during the course of which extensive references were made to the terms of the McConnell contract.

6. The Board in dealing with the question before it has had regard to the reasoning set out in the Livingston Transportation Limited Case (1972) OLRB Rep. May p. 489. In particular the Board has noted the following paragraphs of that decision:

5. The familiar law of master and servant which developed for the purpose of imposing vicarious liability for personal injuries under the doctrine of respondent superior and which focused on the question of control by the alleged master of the manner in which the alleged servant performed the work, is by no means the controlling or determining test for dividing employees from independent contractors, Loblaw Groceries Co. Ltd., 66 CLLC ¶16,078 (OLRB): Denham v. Midland Employers' Mutual Assurance, Ltd. (1955) 2 All E.R. 561 (C.A.); The Telegram Publishing Co. Ltd. Toronto 59 CLLC ¶18,126 (OLRB).

6. A second approach which is sometimes suggested is the fourfold test referred to by Lord Wright in Montreal v. Montreal Locomotive Works Ltd. (1947) 1 D.L.R. 161 (P.C.) at 169 as follows:

"In the more complex conditions of modern industry, more complicated tests have often been applied. It has been suggested that a fourfold test would in some cases be more appropriate, a complex involving (1) control; (2) ownership of the tools; (3) chance of profit; (4) risk of loss. Control in itself is not always conclusive. Thus the master of a chartered vessel is generally the employee of the shipowner though the charterer can direct the employment of the vessel. Again the law often limits the employer's right to interfere with the employee's conduct, as also do trade union regulations."

While the fourfold test is helpful in most situations, and notwithstanding that the Board has indicated that all four tests must be satisfied to determine whether a person is an independent contractor, Cima Limited (1963) May OLRB Mthly. Rep. 100 at 102; Nicks Haulage Limited (1970) November OLRB Mthly. Rep. 871, there are cases where its application lends itself to artificiality. In many cases the evidence weighs heavily in perhaps one or two of the categories but does not weigh heavily in either the third or fourth. In some situations there is strong evidence in one or more categories with no evidence in another category. How then is one to apply the test where the weight of the evidence in two categories suggests one type of relationship, whereas the weight in the other two categories suggests another form of relationship?

7. The third approach and one which has often been overlooked was also referred to by Lord Wright in the Montreal v. Montreal Locomotive Works Ltd. case, *supra*. After referring to the fourfold test Lord Wright made the following statement:

"In many cases the question can only be settled by examining the whole of the various elements which constitutes the relationship between the parties. In this

way it is in some cases possible to decide the issue by raising as the crucial question whose business is it, or in other words by asking whether the party is carrying on the business, in the sense of carrying it on for himself or on his own behalf and not merely for a superior."

The application of that test, i.e., asking whether the business is being carried on for himself or for his superior, may lead to different results from those suggested by the application of the fourfold test. However, it is an approach that in many situations commends itself.

8. A fourth approach was suggested by this Board in the Loblaw Groceries Co. Ltd. case, *supra*, and may be referred to as a statutory purpose test. In the Loblaw case a company had a collective agreement with a trade union and when it subsequently caused the amalgamation of two subsidiary companies - one with a collective agreement with the second union - the bargaining rights between the two unions came into conflict. One of the unions applied to this Board for a ruling as to who was in fact the employer of the employees and the Board was called upon to consider the employment relationship of different employees and who was their employer. In arriving at its decision the Board looked at the common law of this jurisdiction and at the purpose of The Labour Relations Act. In arriving at its result the Board stated at p. 894:

"In the result, we find that, for purposes of The Labour Relations Act, Super-Discount, not Loblaws, is the employer of the eight employees."

We note that the statutory purpose approach has also been adopted in other jurisdiction where it has been necessary to interpret modern industrial legislation.

7. In Ready Mixed Concrete (South East), Ltd. v. Minister of Pensions and National Insurance, (1968) 1 All E.R. 433, the Court in dealing with the question as to whether certain owner drivers were employees of Ready Mixed Concrete (South East), Ltd. declared that a contract of service exists if the following three conditions are fulfilled: (1) the servant agrees that in consideration of a wage or other remuneration he will provide his own work and skill in the

performance of some service for his master; (2) he agrees, expressly or impliedly, that in the performance of that service he will be subject to the other's control in a sufficient degree to make that other master; (3) the other provisions of the contract are consistent with its being a contract of service.

8. With all of the foregoing in mind, we now direct our attention to the particulars of the present case. As has already been noted, the relationship between the respondent and the oil burner servicemen is governed by a contract. The contract provides that the parties thereto agree that the oil burner serviceman referred to throughout as "the contractor" is not an agent, servant or employee of the company and is for all purposes an independent contractor. This, of course, is not determinative of the matter. The relationship is to be decided as a matter of law dependent upon the rights conferred and the duties imposed by the contractor (Ready Mixed Concrete (South East), Ltd. Case, supra).

9. The contract also provides that the contractor acknowledges that prompt, efficient, and courteous service on his part is of critical importance to the company in the development and retention of its fuel oil business and that failure on the part of the contractor in the above matters entitles the company to refer the work in question to other servicemen. It is clear from the foregoing provision that the provision of service is an integral part of the overall business carried on by the company. That this is the case is indicated by the recitals in the preamble to the contract and is confirmed by other operative clauses of the contract.

10. The contract obliges the contractor to perform a series of tasks, which, for the present purposes need not be identified, at any time of the day or night seven days a week in a proper and workmanlike manner. He may, however, where the rendering of prompt and efficient service to customers, both within and without the territory to which he himself has been appointed is not interfered with, arrange with "any other authorized company service contractor" to perform the necessary service. Payment by the company is to be to the contractor who in turn will pay his substitute. In the Ready Mixed Concrete (South East), Ltd. Case, supra, it was said that in a contract of service "the servant must be obliged to provide his own work and skill. Freedom to do a job either by one's own hands, or by another's is inconsistent with a contract of service, though a limited or occasional power of delegation may not be". In the contract under review, the obligation imposed upon the contractor is primarily one for personal service with only a restricted power to delegate which is exercisable on the consent of the company. The delegation is restricted to another authorized company service contractor. In addition, the responsibility for the performance of the work remains upon the contractor.

11. The contract when viewed in the light of the above considerations is indicative of an employer-employee relationship rather than one between a principal and an independent contractor.

12. In the course of the argument made to the Board, reference was made to the "fourfold test" found in the Montreal v. Montreal Locomotive Works Ltd. Case cited in the Livinston Transportation Limited Case, supra. The Montreal Locomotive Works Ltd. Case dealt with the question as to whether a corporation was acting as an agency of government or as an independent contractor. Its reasoning and the tests referred to therein are important in the present instance as an aid in the examination of the claim of the respondent that the servicemen are independent contractors and that they, therefore, cannot be employees within the meaning of The Labour Relations Act.

13. In the area of Control the contractor is his own man in so far as the mechanics of the repair work and service is concerned. The contract, however, stipulates that he must perform emergency services in the territory assigned to him at any hour of the day or night when it is referred to him by the company. The contract further binds the contractor to do service, repair and overhaul work outside the territory designated in his contract when it is reasonably necessary for the company to request him to do so in order to service his customers.

14. Clause 16 of the contract prohibits the contractor from performing any work for any person on the request of or by arrangement with any other fuel oil supplier or for any customers of Gulf Canada Home Comfort Limited except customers "subcontracted" or referred by the company to the contractor.

15. The above clause contains a proviso that the contractor, subject to the preceding conditions set out above, shall be at liberty to perform service, repair or annual overhaul and inspection work for individual persons other than customers in a manner and under circumstances which make it clear to such persons that such work is not being performed by the contractor as an authorized company service contractor.

16. The foregoing proviso appears to give the contractor freedom to carry on a business for persons other than customers of the company and lends credence to the company's position that the contractor is in fact an independent contractor.

17. Clause 17 of the contract obliges the contractor --

To refer forthwith to the Company all enquiries, requests, orders to contracts for fuel oil, equipment service, repair or overhaul received or obtained by the Contractor from Customers or any person residing

within the area in which the Company carries on business and not to directly or indirectly as principal, agent or employee, except for and on behalf of the Company, sell or distribute or solicit orders for fuel oil or equipment for delivery or installation in such area;

(emphasis added)

18. Clause 17 appears to completely nullify any independent action that Clause 16 may have purported to give to the contractor and effectively controls his activities so as to virtually deny him the acquisition of any independent business.

19. The contractor is prohibited for a period of one year after termination of the contract from performing any service, repair or annual overhaul and inspection work within the area in which the company carries on business. The contract further stipulates that the contractor will not carry on his business or solicit directly or indirectly any customers of the company within the time limited above. It appears to the Board that these restrictions on the operation of the contractor are consistent with a master and servant relationship and not with an independent contractor situation.

20. We turn now to the question of Ownership of Tools. A contract requires the contractor to maintain and operate at his own expense a suitable truck or service vehicle. He is required to equip the vehicle with two-way radio equipment.

21. The truck, if indeed it is proper to refer to it as a tool, is used in the ancillary task of transportation and not in the essential business of repair and overhaul of furnaces which are the primary subjects of the contract.

22. The two-way radio is, as already noted, owned by the company and not by the contractor.

23. It is to be assumed that the contractor will employ the normal hand tools that go with his trade, a matter which in the opinion of the Board has no real significance in the present context.

24. With respect to Chance of Profit and Risk of Loss, the two tests must be considered together. The contract provides for payment for service in accordance with a schedule of rates attached to the contract. The rates have reference to particular jobs and services. It also sets out an hourly rate for installation work not covered under the contract at \$5.00 per hour. The contractor is not paid for what is referred to as a "repeat calls". Repeat calls are calls made necessary by reason of defective service or work occurring within a twenty-day

period of completion. It is quite clear from the foregoing that what is involved here is simply a piecework arrangement and which leaves no room for chance of profit or risk of loss and renders the contractor simply a piecework wage earner. The element of profit and loss is therefore absent in the contractual arrangement under review.

25. The Board finds that on a proper interpretation of the contract it cannot be said that each of the elements of the fourfold test has been met so as to enable the Board to find that the oil burner servicemen are independent contractors. On the other hand, having in mind the authorities cited and the considerations set out above, the Board finds that the contract is a contract of service. The Board accordingly finds that the oil burner servicemen are employees of the respondent company within the meaning of The Labour Relations Act.

. . .

29. A certificate will issue to the applicant.

DECISION OF BOARD MEMBER J. D. BELL: April 25, 1974.

I would dismiss this application for the same basic reasons I gave in my decision in the Shell Canada Limited Case, Board File No. 4495-73-R, dated April 2, 1974.

I find that each of the elements of the fourfold test found in the Montreal Locomotive Works Ltd. Case has been met and these oil burner servicemen are independent contractors and cannot be employees within the meaning of The Labour Relations Act.

4977-73-U: Kenneth Thomas Robertson (Complainant) v. VICTORY SOYA MILLS LIMITED, INTERNATIONAL CHEMICAL WORKERS UNION LOCAL 247, VIC BEYER, LOCAL UNION PRESIDENT, AND THOMAS PELLERIN, CHIEF STEWARD, LOCAL 247 (Respondents).

BEFORE: Rory F. Egan, Alternate Chairman, and Board Members J. D. Bell and P. J. O'Keefe.

APPEARANCES AT THE HEARING: Ken Robertson for the complainant; S. D. Bowman and G. C. McKee for the respondent company; S. T. Goudge, S. Netherton, T. Sloan and V. Beyer for the respondent union, Vic Beyer and Thomas Pellerin.

DECISION OF THE BOARD: April 26, 1974.

. . .

2. This is a complaint under section 79 in which the complainant alleges that he has been dealt with by International Chemical Workers Union Local 247, Vic Beyer, Local Union President, and Thomas Pellerin, Chief Steward, Local 247, contrary to the provisions of section 60 of The Labour Relations Act.
3. The complainant also named his employer Victory Soya Mills Limited as a respondent. Having regard to all of the evidence, the Board dismisses the complaint in so far as the company is concerned.
4. The complainant was discharged by the company on November 27, 1973. The complainant was notified of his discharge by a telephone call to his home from his foreman Tom Beaman. On a consideration of all of the evidence and arguments made with respect thereto, the Board finds that the heart of the complainant's case is his claim that the dismissal referred to above was attempted by the company in circumstances contrary to the provisions of Article 30 of the collective agreement.
5. Article 30 provides, inter alia, as follows:

...When an employee is being disciplined in any way he may be accompanied by a Steward or a member of the Union Executive. When an employee is being suspended or dismissed he shall be accompanied by a Steward or a member of the Union Executive.
6. There can be no doubt upon the evidence that the complainant was correct when he protested that he had been deprived of his rights under Article 30 in that he had been dismissed in circumstances which prevented him being accompanied by a steward or member of the union executive. His contention in this regard was acted upon by the union on his behalf and the employer conceded the point to the union and the grievor.
7. A meeting with the company was arranged by the union on December 5, 1973 at which the complainant was present. As a result of the union's representations, the company agreed to pay the complainant four days' pay covering the time from November 27 when the company first purported to dismiss the complainant by telephone until December 5. The company then in the presence of union representation acting on behalf of the complainant again dismissed him.
8. The Board finds after a full consideration of the evidence of the complainant that notwithstanding the arrangements made on December 5 the heart of his complaint continues to be the fact that

he was dismissed on November 27 contrary to Article 30 of the collective agreement.

9. The Board is satisfied that the union in negotiating the agreement with the company concerning the payment to the complainant of four days' pay was acting in good faith in its representation of the complainant.

10. The matter did not end, however, with the settlement of December 5. As already noted, the company having satisfied itself that just cause for discharge existed proceeded to carry out its original intent and discharged the complainant.

11. The union made every reasonable effort but was unable to dissuade the company from carrying out the discharge. The question then arose as to whether the complainant's case was such as to warrant the union proceeding to arbitration, a step which the complainant urged them to take on his behalf.

12. The union executive were aware of the reasons given by the company as just cause for discharge of the complainant. Notwithstanding their conviction, based upon a consideration of the reasons given by the company together with their knowledge of the past employment history of the complainant that the discharge could not be successfully challenged, the executive put the question as to whether to proceed to arbitration, to a membership meeting and a vote. The complainant attended the meeting. The membership voted against taking the matter to arbitration.

13. The Board finds upon a consideration of all of the evidence and upon the arguments of the complainant and the respondents that in dealing with all of the aspects of the complainant's case the union, Vic Beyer and Thomas Pellerin acted in a manner that was not arbitrary, discriminatory or in bad faith. The complaint is accordingly dismissed.

4642-73-R: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) (Applicant) v. FRUEHAUF TRAILER COMPANY OF CANADA LIMITED (Respondent).

BEFORE: J. D. O'Shea, Q.C., Vice-Chairman, and Board Members H. Ade and E. Boyer.

APPEARANCES AT THE HEARING: L. A. MacLean and W. Cornwall for the applicant; W. Gibson Gray, Q.C., A. Purdon and Ian Johnston for the respondent.

DECISION OF THE BOARD: April 26, 1974.

1. Following the counting of the ballots in this matter, the respondent requested a hearing "to make representations as to the accuracy of the report (Form 46) and as to the conclusions the Board should reach in view of the report".

2. This matter came on for continuation of hearing on March 29, 1974 "for the purpose of considering the evidence and representations of the parties with respect to the representation vote held in this matter on December 3, 1973 and all outstanding issues".

3. At the hearing full opportunity was given to the parties to deal with the above matters.

4. Having considered the evidence contained in the Report of the Examiner dated January 17, 1974 and the representations of the parties with respect thereto, the Board finds that T. Kubota is a senior employee of the respondent. While Mr. Kubota has certain "supervisory functions" such functions are more in the nature of those of a lead hand rather than managerial functions. The respondent relies upon Mr. Kubota's experience; however, Mr. Kubota has no real independent authority. The majority of his time is spend doing the same work as other employees in his department. The Board therefore finds that T. Kubota does not exercise managerial functions within the meaning of section 1(3)(b) of The Labour Relations Act and is an employee of the respondent for the purposes of the Act.

5. The respondent also took the position that the Board should have heard evidence with respect to facts surrounding the acquisition of the applicant's membership evidence which was filed in an earlier application. That application was withdrawn when it came to the attention of officials of the applicant that there were some irregularities in the receipt of moneys which resulted in some applicants for membership not themselves paying the sum of one dollar. The respondent wanted such evidence aired in order that the employees could assess the applicant's activities before casting their ballots. At the hearing on January 4, 1974 the respondent requested the Board to assume the carriage of the action with respect to the respondent's complaint concerning the earlier membership evidence and the respondent asked the Board to call as its witness concerning such evidence a person whom the respondent had summonsed to attend the hearing. This the Board refused to do.

6. The Board ought not to be a party to an attempt, by one of the parties in any proceedings, to advance its interests by conducting inquiries, the only real reason for which would be for purposes of propaganda. The Board in its decision of January 7, 1974 has already dealt fully with the issue concerning the membership evidence filed in the earlier application and there is nothing before the Board which would cause the Board to vary or revoke that decision.

7. The respondent also claimed that three ballots had been spoiled and had therefore been incorrectly counted. The form of ballot used in the pre-hearing representation vote reads as follows:

<p align="center">Mark "X" opposite your choice</p> <p align="center">IN YOUR EMPLOYMENT RELATIONS WITH</p> <p align="center">FRUEHAUF TRAILER COMPANY OF CANADA LIMITED,</p> <p align="center">DO YOU WISH TO BE REPRESENTED BY</p>	
<p>INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW)</p>	<p align="center">YES</p>
	<p align="center">NO</p>

8. The three ballots complained of were marked as follows. In the box opposite the word YES, two voters had inserted a check mark rather than an "X". The third ballot contained the word "yes" opposite the word YES. For the reasons given in the National Starch and Chemical Co. (Canada) Ltd. Case, OLRB Monthly Report, June 1968, p. 285, and Lecours Lumber Company Limited Case, OLRB Monthly Report, November 1972, p. 982, the Board is satisfied that each of the three ballots in question clearly and unequivocally demonstrates that they were intended to indicate a vote in favour of the applicant.

9. The Board accordingly finds that the pre-hearing representation vote clearly indicates the true wishes of the employees who cast ballots and that the majority of employees who cast ballots wished to be represented by the applicant.

. . .

11. Having regard to the agreement of the parties, the Board further finds that all office, clerical and technical employees of the respondent at its Dixie Manufacturing Plant, Mississauga, save and except supervisors, persons above the rank of supervisor, one secretary to each of the following Vice-President of Sales, the Vice-President - Finance and the Plant Manager persons employed in the Industrial Relations Department, senior buyer,

secretary-stenographers to each of the following: resident engineer, the manager material control, the purchasing agent, the product manager and the assistant controller, and persons regularly employed for not more than 24 hours per week, constitute a unit of employees of the respondent appropriate for collective bargaining.

. . .

16. A certificate will issue to the applicant.

. . .

5472-74-R: Brewery, Soft Drink, Distillery, Distributors & Miscellaneous Workers, Local 1000 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. GILBEY CANADA LIMITED (Respondent) v. Distillery Local 356, The International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America - C.L.C. and The International Union of United Brewery, Flour, Cereal, Soft Drink & Distillery Workers of America - C.L.C. (Intervener).

BEFORE: D. H. Kates, Vice-Chairman, and Board Members H. J. F. Ade and A. Main.

APPEARANCES AT THE HEARING: L. MacLean, N. Wilson and W. Davidson for the applicant; D. Hersey and P. Green for the respondent; C. Paliare for the intervener.

DECISION OF THE BOARD: April 26, 1974.

1. Having regard to the Board's decision in The Dominion Stores Limited Case (File #5355-73-R) the Board finds that the applicant is a trade union within the meaning of section 1(1)(n) of The Labour Relations Act.

2. The Board further finds that all employees of the respondent company in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office, sales and laboratory staff, operating engineers and cafeteria staff, constitute a unit of employees of the respondent appropriate for collective bargaining.

3. For purposes of clarity the Board notes that students employed during the school vacation period are included in the appropriate bargaining unit. The Board's practice in application for certification where an incumbent union holds bargaining rights is to describe the appropriate unit in terms of the unit in the last collective agreement. The Board upon the representations of counsel finds that there was a

history of employing students during the school vacation period and those students when employed were covered under the terms of the collective agreement between the respondent and the intervener. (see; John Inglis Co. Ltd. OLRB M.R. July 1961 100).

4. The Board is satisfied on the basis of all the evidence before it that not less than thirty-five per cent of the employees of the respondent in the bargaining unit at the time the application was made, were members of the applicant on April 19, 1974, the terminal date fixed for this application and the date which the Board determines, under section 92(2)(j) of The Labour Relations Act, to be the time for the purpose of ascertaining membership under section 7(1) of the said Act.

5. A representation vote will be taken of the employees of the respondent in the bargaining unit. All employees of the respondent in the bargaining unit on the date hereof who do not voluntarily terminate their employment or who are not discharged for cause between the date hereof and the date the vote is taken will be eligible to vote.

6. Voters will be given a choice between the applicant and the intervener.

7. The matter is referred to the Registrar.

5050-73-U: John Bell (Complainant) v. AMALGAMATED METAL INDUSTRIES LIMITED (Respondent).

- and -

5051-73-U: John Bell (Complainant) v. International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO (Respondent).

BEFORE: D. H. Kates, Vice-Chairman, and Board Members A. Main and F. W. Murray.

APPEARANCES AT THE HEARING: R. Smith for the complainant; B. P. Goodman, S. Petronski, W. J. McNaughton and H. Lake for the respondents.

DECISION OF THE BOARD: April 30, 1974.

1. During the course of the hearing of this matter counsel for the complainant withdrew in toto the allegations filed against the respondent employer. The Board, having regard to the stage in the proceedings at which the request to withdraw was made, dismissed the complaint against the respondent employer.

2. The Board therefore must now deal with the complaint filed the respondent trade union alleging violation of its duty of fair representation in the Mr. Stan Petronski, business agent of the

respondent union contrary to the provisions of Section 60 of the Act "did on his own behalf and on behalf of the respondent act in a manner that was arbitrary, discriminatory and in bad faith...by coercing and intimidating the complainant's employer, A.M.I. to discharge the complainant because the said Stan Petronski thought that his son, Michael Petronski, should have been given the complainant's job".

3. The Board has quoted directly from the complainant's complaint (i.e., Form 32, paragraph 4) for reasons that will become more apparent as this decision unfolds.

4. The facts giving rise to the allegations filed against the respondent trade union are relatively straightforward. Mr. Bell in June 1973 was issued a work slip by Mr. George Magold chief steward of the respondent trade union which permitted him to become an employee of the respondent company in accordance with the union security provisions of the collective agreement in effect at that time between the respondent employer and the respondent union. Mr. Bell was assisted by the efforts of Mr. Yvan Gringras, a foreman in the respondent's employ, in obtaining the said document enabling him to be hired as a "helper" at the Lennox Generating Station Project at Bath. Mr. Bell also applied for and became a probationary member of the respondent union. It appears Mr. Bell worked as a "helper" on the project performing various and sundry duties without complaint until the date of his discharge on December 18, 1973. Initially he was paid a helper's rate which was increased to the rate of a fourth year apprentice as set out under the terms of the subsisting collective agreement. The complainant was never enrolled as an apprentice nor did the evidence indicate that Mr. Bell ever applied to be enrolled as an apprentice.

5. In November, 1973, three employees were laid off by the respondent employer in accordance with the terms of the collective agreement. Two of the employees were journeymen members and the other owed his employment status to a "travelling card" issued by the respondent trade union. One of the journeymen members laid off was Michael Petronski who until the date of his lay off was employed as a "rigger" on the respondent's project.

6. The Board also heard evidence to the effect that three journeymen mechanics were being transferred from a Windsor project for purposes of assuming employment with the respondent employer. This transfer was made in accordance with management's prerogative as defined under the terms of the subsisting collective agreement.

7. On December 5, 1973 Mr. Stan Petronski was elected to the office of business agent of the respondent trade union. One of Mr. Petronski's first tasks was to satisfy himself that the "transfers" from Windsor did not replace in an untoward manner incumbent employees recently laid off. For this purpose a meeting of the representatives

of the employer and union was arranged on December 11, 1973. At this meeting the conclusion was reached by Mr. Stan Petronski that the two events were merely coincidental and purportedly no violation of the collective agreement transpired. In short, both "the lay-offs and the transfers" were bona fide.

8. There is some disputed evidence as to whether Mr. Bell's employment status was questioned at that meeting. Mr. Petronski denied that Mr. Bell's name was mentioned. He did state however that a certain issue relating to hiring apprentices by the employer in accordance to the terms of the collective agreement was raised. In fact, Mr. Petronski undertook once elected as business agent to straighten out the apprenticeship issue and assured Mr. John Kelly, co-ordinator of the respondent's apprenticeship programme, that he would support him by the encouragement of employers to abide by the apprenticeship provisions of the collective agreement.

9. On the other hand, there was the testimony of Mr. Yvon Gringras who attested that at the meeting Mr. Bell's employment status was discussed and Mr. Petronski came to the conclusion that Mr. Bell's status was "legal". Furthermore, Mr. Petronski instructed his union steward Mr. Frank Lisella, to inform the rank and file members that everything including Mr. Bell's status was straightened out. Mr. Lisella in his testimony corroborated this to be the case.

10. We are of the opinion that whether or not the cause of Mr. Bell's discharge was precipitated by the entreaties of the respondent union to persuade the employer to abide by the apprenticeship provisions of the collective agreement is not for us to decide. Rather the issue before this Board is whether based on the allegation filed in the complainant's complaint, the respondent trade union acted in a manner consistent with its duty of fair representation as described in section 60 of the Act.

11. Insofar as the meeting of December 11, 1973 and the matters discussed at that time, we prefer the testimony of Mr. Yvan Gringras to that of Mr. Stanley Petronski. In short, we are quite satisfied that as of that date Mr. Bell's employment status as a probationary member in the respondent's organization was known and approved by Mr. Petronski.

12. It was only after this meeting when the extent of the dissatisfaction amongst rank and file members occasioned by the lay-offs and the transfers from Windsor was discerned did Mr. Petronski conclude that Mr. Bell's probationary status required review. And in this regard, Mr. Petronski ultimately persuaded the employer in accordance with the agreement to employ an apprentice to perform the duties of Mr. Bell. Thus, the decision to discharge Mr. Bell was concluded on December 18, 1973, and confirmed on January 2, 1974 when Mr. Bell returned to the job site.

13. In paragraph 2 herein the Board quoted the grounds upon which the complainant requests the Board to rule the respondent union in violation of its duty of fair representation. These grounds were repeated in counsel's letter of March 15, 1974 in answer to respondent counsel's request for particulars. That is to say, Mr. Stan Petronski is alleged to have urged the employer to discharge Mr. Bell in order that his son Michael could be hired in Mr. Bell's place.

14. The Board reviewed the record of the evidence in this case and concludes that in no way has counsel for the complainant attempted to adduce evidence in support of the allegations made in the complaint and elaborated in the letter of March 15, 1974. In fact the witnesses called by counsel for the complainant were only questioned on matters relating to the allegations by counsel for the respondent during the course of cross-examination. And, while being cross-examined these witnesses indicated to the Board that there was no basis in fact supporting the allegation that Mr. S. Petronski sought Mr. Bell's discharge in order to find employment for his son. At this point, the Board proposes to repeat some of the testimony given.

15. Counsel for the respondent put to the witness John Bell the following question: "Do you have personal knowledge that you were discharged so Michael Petronski could take your job?" The witness answered that he did not have such personal knowledge but was told by Mr. Yvan Gringras that this was the case.

16. Upon cross-examination of Mr. Gringras counsel for the respondent asked; "Do you recall telling Mr. Bell that he is being fired so that Michael Petronski could work?" Mr. Gringras in response stated he never told John Bell that he was being fired because the union wanted Michael Petronski back on the job. Furthermore, Mr. Gringras testified that when Mr. Knox instructed him to discharge Mr. Bell no reason was given for the discharge. He stated that there was never any need for Michael Petronski's services as a "rigger", after he was laid off in November. In fact, at the material time of Mr. Bell's discharge, no reference whatsoever was made to Michael Petronski.

17. Counsel for the respondent union called upon Mr. Stan Petronski, Mr. Magold, chief steward, and Mr. John Kelly to testify. All of these witnesses denied knowledge of any attempt by the respondent trade union to cause Mr. Bell's discharge for the reasons set out in the complaint. And, of greater significance, no attempt was made by counsel for the complainant to challenge these denials in cross-examination.

18. During the course of argument after all the evidence was in, no mention was made by counsel for the complainant in support of the proposition that Mr. Bell's discharge was occasioned by the efforts of Stan Petronski to persuade the employer to hire Michael Petronski to the position vacated by the complainant. In fact throughout the hearing of this matter, this proposition was not pressed at all.

19. In the result, the Board is satisfied that no prima facie case was made out in support of the complainant's allegations of a violation of section 60 of the Act. It follows that the Board has no basis upon which to rule that the respondent trade union had at any time abdicated its duty of fair representation. The complaint against the respondent trade union is therefore dismissed.

5237-73-U: Riccardo Pace (Complainant) v. UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA, LOCAL 523 (Respondent).

BEFORE: G. W. Reed, Q.C., Chairman, and Board Members H.J.F. Ade and E. Boyer.

DECISION OF THE BOARD: April 30, 1974.

1. This is a complaint under section 79 of The Labour Relations Act in which the complainant, who is also the grievor, alleges that he has been dealt with contrary to the Act by the respondent trade union. More specifically, the complainant alleges that the respondent failed to represent him fairly in the matter of a grievance which he filed under the terms of the collective agreement between the respondent and his former employer, General Drop Forge Limited. The grievance related to the complainant's discharge by his employer.

2. A Field Officer was appointed in this matter and he has now reported to the Board. It appears from the complaint and from the written statement which the complainant gave to the Field Officer that he was discharged on July 3, 1973. The union and the employer state that he was discharged June 4. The complainant subsequently stated that he could not remember the exact date on which he was discharged. For present purposes the exact date of the discharge is not material. The discharge came about following a fight in the plant with a fellow employee. A grievance was filed and was taken through the various steps of the grievance procedure by the respondent trade union without success. Having regard to the time limits in the collective agreement, the union applied for arbitration giving the name of the union nominee and the employer replied naming the employer nominee to the arbitration board. Subsequently the union called a membership meeting for August 26, 1973 in which notice was given that the matter of whether the complainant's grievance should be carried through to arbitration would be discussed. The complainant was notified of this meeting and was also notified that the union had to apply for arbitration because of the time limits in the collective agreement. In other words, it was the practice of the union in deciding whether to carry a grievance to arbitration to have the membership decide the issue on a vote. In the case, the time limits under the collective agreement for initiating the arbitration procedure would have expired before a membership meeting

could be called. In order not to prejudice the position of the complainant, the union executive initiated the arbitration procedures and subsequently called the membership meeting.

3. In the notice to the complainant of the membership meeting, the complainant was told that he had the right to attend the meeting and to participate in the decision as well as the vote. The complainant attended and took part in that meeting and a vote was held on whether to take the grievance to arbitration and the membership voted not to do so. The complainant was subsequently notified by letter that the matter would not proceed to arbitration. In the complaint it is alleged that the union and in particular its business agent wrongly considered facts outside and beyond the issues involved in the complainant being fired and accordingly did act in a manner that was arbitrary, discriminatory and in bad faith. There is nothing in the statement which the Field Officer obtained from the complainant which in any way supports this allegation. In his statement to the Board, the complainant merely says that the union did not properly represent him during the grievance procedure. Nothing further is given in support of this statement. The complainant was represented by a solicitor and in a letter to the Field Officer the solicitor took the position that the complainant had a medical problem as a result of which the company should have transferred him from his position as hammer man to some other less demanding task. The solicitor stated that the complainant had, on many occasions, requested a change. The letter goes on to state that if a transfer had been made then it is highly unlikely that the fight would have taken place at all. A letter from the complainant's doctor contains an opinion supporting this line of argument. The complainant's solicitor goes on to allege that the respondent union "obviously failed to disclose this information" (i.e., the letter from the doctor) to the general meeting.

4. In his statement to the Board the complainant says that he advised the business agent not to divulge the contents of the doctor's letter to the membership but when it became apparent to him that the membership was not in sympathy with his grievance he authorized the business agent to read the letter to the meeting. The complainant also said that some years ago he had been taken off the "hammer" but had requested to be returned to the "hammer" and this was done. At a letter date prior to his termination he did make one request to be removed from the "hammer" and this was denied.

5. Section 60 of The Labour Relations Act provides as follows:

60. A trade union or council of trade unions, so long as it continues to be entitled to represent employees in a bargaining unit, shall not act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any of the employees

in the unit, whether or not members of the trade union or of any constituent union of the council of trade unions, as the case may be.

There is absolutely nothing in the materials before us to support an allegation that the respondent union acted in bad faith nor in our view is there anything before us to suggest that the union acted in an arbitrary or discriminatory manner. Clearly the union processed the grievance through to the final stage and acted in the best interests of the complainant in initiating the arbitration procedure even though the practice of the union required that the membership decide this issue by vote. The complainant was notified of the membership meeting, notified of the purpose of the meeting, invited to attend and to participate and did in fact do so. It is obvious that the complainant's case with respect to the grievance rested in large measure on the letter from his doctor. At first the complainant did not want this letter to be placed before the membership but it was ultimately revealed to them and was before them when the matter was finally considered by way of a vote. On the materials before us we are unable to see anything which suggests that the union either through its executive or through the membership acted in an arbitrary or discriminatory manner in deciding not to carry the grievance to arbitration. It must be remembered that section 60 does not impose a duty to carry every grievance through to arbitration. It merely requires that in representing an employee in the bargaining unit the union must not act in a manner that is arbitrary, discriminatory or in bad faith. There is nothing in the material before us which in our opinion supports an allegation that the respondent trade union acted contrary to section 60.

6. In the result, we are of the opinion that the Board ought not to inquire further into the complaint by means of a formal hearing by the Board and the complaint is therefore dismissed. If the complainant is of the opinion that the Board has erred in any way in arriving at its decision, it is always open to him under the provisions of section 95(1) of The Labour Relations Act to request the Board to reconsider its decision.

5267-73-R: International Association of Bridge, Structural and Ornamental Iron Workers - Local Union #700 (Applicant) v. CATALYTIC ENTERPRISES LIMITED (Respondent) v. International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers (Intervener #1) v. Millwright Local 1592, United Brotherhood of Carpenters and Joiners of America (Intervener #2).

BEFORE: R. A. Furness, Vice-Chairman and Board Members H. J. F. Ade and E. Boyer.

APPEARANCES AT THE HEARING: Pat Doyle and Allan MacIsaac for the applicant; R. C. Fillion and G. Davis for the respondent; John Irvine for intervener #2; and John D. Carroll for intervener #1.

DECISION OF THE BOARD:

April 24, 1974.

. . .

3. The applicant is seeking certification for a bargaining unit of ironworkers in the employ of the respondent in the Board's geographic area #1 and #2, save and except non-working foremen and persons above the rank of non-working foreman. The job affected by this application is construction work in Sarnia. The interveners have intervened on the basis of collective agreements which they have with the respondent.

4. The respondent claims to be a party to a collective agreement with International Association of Bridge, Structural and Ornamental Iron Workers (hereinafter referred to as the "International") by virtue of an agreement entered into on November 14, 1957, between the International and Catalytic Construction of Canada, Limited which incorporated by reference an agreement between the International and Catalytic Engineering and Construction Company dated May 20, 1946. It was established at the hearing that the respondent is the same corporate entity as Catalytic Construction of Canada, Limited and that merely a change in name occurred in 1970.

5. The respondent adopted the position that the International has bargaining rights by virtue of the agreement entered into on November 14, 1957, and that since the International has bargaining rights this constituted a bar to this application. The applicant argued that the agreement between the respondent and the International was not a collective agreement and was therefore not a bar to this application.

6. The agreement between the respondent and the International dated November 14, 1957 recites that the parties accept an attached agreement (which became effective on May 20, 1946) as the basic conditions of their operations on all projects undertaken by the respondent in Canada. The attached agreement states that it continues in effect until terminated by three months written notice by either party to the other and stipulates that the respondent agrees to pay the scale of wages and conduct its operations under the working rules established in the territory where the work is being performed. Subsequently, a new "attached" agreement was entered into and became effective on October 24, 1958. This new agreement is similar to the agreement which became effective on May 20, 1946.

7. The respondent, called Mr. George Davis, the assistant manager of maintenance for the respondent, as a witness. He gave evidence that the respondent applies the agreement dated October 24, 1958, in Ontario

and that the respondent never signs local agreements. The witness also informed the Board that the respondent had not entered into any renewals of the agreement dated October 24, 1958. He testified that the respondent had had no contact with the International in Canada.

8. There is some question of whether the agreements which became effective on May 20, 1946, and October 28, 1958, are collective agreements. By their terms such documents purport to cover "all placed where work is being performed or is to be performed by the (respondent)". Nevertheless, the respondent on July 18, 1972, purported to enter into a collective agreement with respect to Sarnia with a number of trade unions, including, inter alia, the International, covering "all work of a maintenance, repair and renovation nature". Neither of the agreements which became effective on May 20, 1946, and October 24, 1958, contain any restriction on the type of work covered therein. It is not necessary, in the circumstances, for the Board to decide whether these two agreements dated May 20, 1946 and October 24, 1958, are collective agreements within the meaning of section 1(1)(e) of The Labour Relations Act.

9. Assuming, without deciding, that the two agreements referred to in paragraph 8 herein are collective agreements within the meaning of section 1(1)(e) of The Labour Relations Act, they are agreements which are for unspecified terms. Having regard to the provisions of section 44(1) of The Labour Relations Act, they are deemed to provide for their operation for a term of one year from the date that they commenced to operate. There is no evidence that the International has taken any action since the execution of the agreement which became effective on October 24, 1958, to preserve its bargaining rights in Ontario. In these circumstances, and having regard to the lapse of more than fourteen years since the last mentioned agreement expired, the Board finds that the International has abandoned any bargaining rights which it may have had for the employees affected by this application. Accordingly, the alleged collective agreement is not a bar to this application.

10. In the circumstances of this application and having regard to the representations of the parties, the Board further finds that all ironworkers in the employ of the respondent engaged on construction projects in the County of Lambton, save and except non-working foremen and persons above the rank of non-working foreman, constitute a unit of employees of the respondent appropriate for collective bargaining.

. . .

12. A certificate will issue to the applicant.

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TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF
BY THE ONTARIO LABOUR RELATIONS BOARD

	Number of Votes		
	4th Quarter (Jan - Mar)	Fiscal Year	
	1973-74	1973-74	1972-73
<u>Certification after Vote*</u>			
Pre-hearing Vote	8	64	47
Post-hearing Vote	17	90	75
Ballots not Counted	-	-	2
 <u>Dismissed after Vote</u>			
Pre-hearing Vote	14	49	36
Post-hearing Vote	18	54	57
Ballots not Counted	<u>2</u>	<u>5</u>	<u>4</u>
TOTAL	59	262	221
	<u>==</u>	<u>==</u>	<u>==</u>

*Includes applicant-intervener applications in which both applicant and intervener apply for a new unit and either applicant or intervener is certified.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF
BY THE ONTARIO LABOUR RELATIONS BOARD

	Number of Votes		
	4th Quarter (Jan - Mar)	Fiscal Year	
	1973-74	1973-74	1972-73
*Respondent Union Successful	-	3	3
Respondent Union Unsuccessful	<u>4</u>	<u>17</u>	<u>13</u>
TOTAL	4	20	16
	<u>==</u>	<u>==</u>	<u>==</u>

*In Termination Proceedings where a vote is taken the applicant is a group of employees or the employer; the incumbent union is thus the respondent.

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING APRIL 1974

BARGAINING AGENTS CERTIFIED DURING APRIL

No Vote Conducted

2782-73-R: Diamond "Z" Association (Applicant) v. Zehr's Markets Limited (Respondent) v. Retail Clerks International Association (Intervener).

Unit #3: "all employees of the respondent in its retail stores at Guelph, save and except store managers and persons above the rank of store manager." (142 employees in the unit).

(BARGAINING UNIT #1 & #2 - SEE CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE).

4267-73-R: Labourers' International Union of North America, Local 183 (Applicant) v. Alpha Forming Corp. Ltd. (Respondent).

Unit: "all employees of the respondent engaged in concrete forming on residential building projects in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (46 employees in the unit). (HAVING REGARD TO ALL OF THE ABOVE CONSIDERATIONS).

4277-73-R: Labourers' International Union of North America, Local 183 (Applicant) v. Palmdale Development Co. (Respondent).

Unit: "all employees of the respondent engaged in concrete forming on residential building projects in Metropolitan Toronto, the Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (14 employees in the unit). (HAVING REGARD TO ALL OF THE ABOVE CONSIDERATIONS).

4450-73-R: Labourers' International Union of North America, Local 183 (Applicant) v. Peniche Construction Forming (Respondent).

Unit: "all employees of the respondent engaged in concrete forming on

residential building projects in Metropolitan Toronto, the Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (50 employees in the unit). (HAVING REGARD TO ALL OF THE ABOVE CONSIDERATIONS).

(1974) 2 OLRB M.R. - PAGE 208.

4493-73-R: United Steelworkers of America (Applicant) v. Gulf Oil Canada Limited (Respondent).

Unit: "all oil burner service mechanics employed by the respondent at Ottawa, save and except foremen and persons above the rank of foreman." (1 employee in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(1974) 2 OLRB M.R. - PAGE 245.

4495-73-R: United Steelworkers of America (Applicant) v. Shell Canada Limited (Respondent).

Unit: "all employees of the respondent in Ottawa employed as oil burner servicemen, save and except foremen and persons above the rank of foreman." (no employees in the unit).

(1974) 2 OLRB M.R. - PAGE 200.

4536-73-R: Labourers' International Union of North America, Local 183 (Applicant) v. Toronto Zenith Contracting Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent engaged in concrete forming on residential building projects in Metropolitan Toronto, the Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen, persons above the rank of non-working foreman and those employees covered by a collective agreement between the respondent and the International Union of Operating Engineers Local 793." (40 employees in the unit). (HAVING REGARD TO ALL OF THE ABOVE CONSIDERATIONS). (FOR THE PURPOSE OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT PERSONS CLASSIFIED AS TRUCK DRIVERS, YARD MEN, AND DRAIN AND FLOOR MAN ARE NOT EMPLOYEES IN THE BARGAINING UNIT.).

4637-73-R: Labourers' International Union of North America, Local 183 (Applicant) v. Crossroads Apartments Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all construction labourers in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario employed on residential construction, save and except construction labourers employed as helpers of bricklayers and plasterers, non-working foremen and persons above the rank of non-working foreman." (15 employees in the unit).

4706-73-R: Nurses' Association Plummer Memorial Public Hospital (Applicant) v. Plummer Memorial Public Hospital (Respondent).

Unit #1: "all registered and graduate nurses employed by the respondent at Sault Ste. Marie, save and except head nurses, persons above the rank of head nurse, and registered and graduate nurses regularly employed for not more than 24 hours per week." (93 employees in the unit).

(BARGAINING UNIT #2 - SEE APPLICATION CERTIFIED SUBSEQUENT TO POST-HEARING VOTE).

4862-73-R: Health Sciences Association of the Regional Municipality of Ottawa-Carleton (Applicant) v. Ottawa-Carleton Regional Area Health Unit (Respondent) v. Civic Institute of Professional Personnel (Intervener).

Unit: "all employees of the respondent engaged in its Home Care Programme, save and except supervisors, persons above the rank of supervisor, registered nurses, graduate nurses and office staff." (4 employees in the unit).

5061-73-R: Communication Workers of Canada (Applicant) v. Northern Electric Company Limited (Respondent).

Unit: "all office, clerical and technical employees of the respondent at the respondent's North York plant located at 20 Norelco Drive in Metropolitan Toronto, save and except supervisors, persons above the rank of supervisor, professional engineers, registered nurses, members of the personnel department, secretaries to the manufacturing manager, secretaries to the two production managers, control analyst, and persons covered by existing collective agreements between the respondent and the applicant." (18 employees in the unit). (HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES).

5096-73-R: United Steelworkers of America (Applicant) v. Wonder Fuels Limited (Respondent).

Unit: "all employees of the respondent engaged as oil burner servicemen at Ottawa, save and except foremen, persons above the rank of foreman, office and sales staff." (1 employee in the unit).

5106-73-R: Federation of Children's Aid Staffs (Applicant) v. Porcupine and District Children's Aid Society (Respondent).

Unit: "all employees of the respondent in the City of Timmins and the District of South Cochrane, save and except office manager, persons above the rank of office manager, social workers, child care workers and supervisors, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (6 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5107-73-R: Federation of Children's Aid Staffs (Applicant) v. Porcupine and District Children's Aid Society (Respondent).

Unit: "all social workers and child care workers of the respondent in the City of Timmins and the District of South Cochrane, save and except supervisors, persons above the rank of supervisor, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (16 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5119-73-R: Canadian Union of Public Employees (Applicant) v. North Bay Public Library Board (Respondent).

Unit #1: "all employees of the respondent at North Bay, save and except chief librarian, persons above the rank of chief librarian, treasurer, executive secretary to the chief librarian, persons regularly employed for not more than 24 hours per week, and students employed during the school vacation period." (16 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(BARGAINING UNIT #2 - SEE CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE).

5122-73-R: Toronto Typographical Union #91 (Applicant) v. Computer Typesetting of Canada (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at Metropolitan Toronto engaged in composing room work, save and except non-working foremen and persons above the rank of non-working foreman." (14 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (THE BOARD NOTED THE FURTHER AGREEMENT OF THE PARTIES THAT THE LIST OF EMPLOYEES FOR THE PURPOSE OF THIS APPLICATION CONTAINS THE NAMES OF 20 PERSONS WHO ARE SET OUT IN PARAGRAPH 3 OF THE BOARD'S DECISION OF FEBRUARY 20, 1974.). (THE BOARD NOTES THE FURTHER AGREEMENT OF THE PARTIES TO WAIVE A FORMAL REPORT OF THE EXAMINER.).

5125-73-R: Canadian Union of Public Employees (Applicant) v. Port Colborne Public Library Board (Respondent).

Unit: "all employees of the respondent in Port Colborne, save and except chief librarian, persons above the rank of chief librarian, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (31 employees in the unit).

5155-73-R: Nurses' Association St. Joseph's Hospital, Toronto (Applicant) v. St. Joseph's Hospital, Toronto (Respondent).

Unit: "all lay registered and graduate nurses employed by the respondent in a nursing capacity at its hospital in Toronto, save and except head nurses, persons above the rank of head nurse, and persons regularly employed for not more than twenty-four hours per week." (444 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR THE PURPOSES OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES ON THE FOLLOWING: NURSES CLASSIFIED BY THE RESPONDENT AS EMPLOYEE HEALTH NURSE ARE INCLUDED IN THE BARGAINING UNIT; NURSES CLASSIFIED BY THE RESPONDENT AS OFFICE AND CLERICAL, CHIEF TECHNICIAN RADIOISOTOPES, MEDICAL RECORDS LIBRARIAN, ARE EXCLUDED FROM THE BARGAINING UNIT. ...).

5206-73-R: Ontario Housing Corporation Employees, Local 767 C.U.P.E. (Applicant) v. Del Zotto Property Management (Respondent).

Unit: "all caretaking and maintenance employees of the respondent at 2547 Lakeshore Boulevard, Etobicoke, save and except supervisors, persons above the rank of supervisor, students employed during the school vacation period and persons regularly employed for not more than 24 hours per week." (2 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5224-73-R: Amalgamated Meat Cutters & Butcher Workmen of North America AFL-CIO-CLC (Applicant) v. Swift Canadian Co., Limited, Edible Oil Division (Respondent).

Unit: "all employees of the Quality Control Department of the Edible Oil Division of the respondent in Metropolitan Toronto, save and except manager and those above the rank of manager." (6 employees in the unit). (HAVING REGARD TO THE SPECIFIC AGREEMENT OF THE PARTIES).

5241-73-R: International Beverage Dispensers' and Bartenders' Union, Local 280 of the Hotel and Restaurant Employees' and Bartenders' International Union A.F.L.-CIO-CLC (Applicant) v. Granite Club Limited (Respondent).

Unit: "all full-time and part-time male and female tapmen, bartenders, beverage waiters, bar boys, and improvers employed by the respondent in Metropolitan Toronto, save and except supervisors and persons above the rank of supervisor." (43 employees in the unit).

5267-73-R: International Association of Bridge, Structural and Ornamental Iron Workers - Local Union #700 (Applicant) v. Catalytic Enterprises Limited (Respondent) v. International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers (Intervener #1) v. Millwright Local 1592, United Brotherhood of Carpenters and Joiners of America (Intervener #2).

Unit: "all ironworkers in the employ of the respondent engaged on construction projects in the County of Lambton, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit). (HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES).

(1974) 2 OLRB M.R. - PAGE 264.

5298-73-R: Canadian Union of Public Employees (Applicant) v. The Frontenac County Board of Education (Respondent) v. Group of Employees (Objectors).

Unit: "all office, clerical and technical employees of the respondent in the County of Frontenac, save and except supervisors, persons above the rank of supervisor, employees covered by a subsisting collective agreement between the respondent and the Canadian Union of Public Employees, Local 1480, persons regularly employed for not more than 24 hours per week, and students employed during the school vacation period." (230 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR THE PURPOSES OF CLARITY, THE PARTIES FURTHER AGREED THAT PERSONS EMPLOYED IN THE FOLLOWING OCCUPATIONAL CLASSIFICATIONS ARE EXCLUDED FROM THE ABOVE DESCRIBED BARGAINING UNIT BECAUSE THEY ARE EXCLUDED BY THE PROVISIONS OF SECTION 1(3)(b) OF THE LABOUR RELATIONS ACT: DIRECTOR OF EDUCATION, CHIEF PURCHASING AGENT, ASSISTANT SECRETARY TO THE BOARD, SUPERINTENDENT OF BUSINESS AFFAIRS, COMPTROLLER, MANAGER OF PHYSICAL PLANT, SUPERVISOR OF MAINTENANCE, SUPERVISOR OF PLANT OPERATIONS, GENERAL FOREMAN (PLANT MAINTENANCE), FOREMAN PAINTER, SCHOOL SUPERVISOR (CARETAKING & MAINTENANCE), PERSONNEL MANAGER, PAYROLL SUPERVISOR, MANAGER OF AUXILIARY SERVICES AND TRANSPORTATION, ASSISTANT TO THE MANAGER OF AUXILIARY SERVICES AND TRANSPORTATION, SENIOR ACCOUNTANT, STATISTICIAN, MANAGER OF MEDIA SERVICES, CHIEF OFFSET PRINTER, SECRETARIES TO:- DIRECTOR OF EDUCATION, MANAGER OF AUXILIARY SERVICES AND TRANSPORTATION, SUPERINTENDENTS OF EDUCATION, CHIEF PURCHASING AGENT, ASSISTANT SECRETARY TO THE BOARD, PERSONNEL MANAGER, CO-ORDINATOR OF CONTINUING EDUCATION, MANAGER OF PLANT, SUPERINTENDENT OF BUSINESS AFFAIRS AND THE RECORDING SECRETARY TO THE BOARD.). (4. FOR THE FURTHER PURPOSES OF CLARITY, THE PARTIES FURTHER AGREED THAT PERSONS EMPLOYED IN THE FOLLOWING OCCUPATIONAL CLASSIFICATIONS DO NOT SHARE A COMMUNITY OF INTEREST WITH PERSONS EMPLOYED IN THE ABOVE DESCRIBED BARGAINING UNIT: CHIEF ATTENDANCE COUNSELLOR, ATTENDANCE COUNSELLOR, MANAGER OF CLINICAL SERVICES, NON-TEACHING ASSISTANTS PREVENTATIVE MAINTENANCE INSPECTOR, ENVIRONMENTAL CONTROL TECHNICIAN, CONSTRUCTION INSPECTOR, APPRENTICE CHEF AND CAFETERIA ASSISTANT.).

5311-73-R: Canadian Union of Public Employees (Applicant) v. The Board of Park Management of the City of Belleville (Respondent).

Unit: "all employees of the respondent at Belleville, Ontario, save and except foremen, persons above the rank of foreman, office and technical staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (11 employees in the unit). (FOR PURPOSES OF CLARITY THE BOARD NOTED THAT PERSONS EMPLOYED UNDER ANY LOCAL INITIATIVE PROGRAMME OR UNDER ANY WINTER WORKS PROGRAMME ARE INCLUDED IN THE APPROPRIATE BARGAINING UNIT. (SEE; THE CORPORATION OF THE COUNTY OF NORFOLK CASE OLRB M.R. JANUARY 1974 35).).

(1974) 2 OLRB M.R. - PAGE 219.

5318-73-R: Christian Labour Association of Canada (Applicant) v. Best-view Services Limited (Respondent).

Unit: "all employees of the respondent employed in the Municipality of Orillia, Ontario, save and except supervisors, persons above the rank of supervisor, office staff, and students employed during the school vacation period." (8 employees in the unit).

5328-73-R: Bakery & Confectionery Workers' International Union of America, Local 264 (Applicant) v. Dare Foods (Biscuit Division) Limited (Respondent).

Unit: "all employees of the respondent at 2481 Kingsway Drive, Kitchener, save and except foremen, foreladies, persons above the rank of foreman and forelady, office and sales staff, plant nurses, persons regularly employed for not more than 24 hours per week, and students employed during the school vacation period." (314 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5332-73-R: Canadian Union of Operating Engineers (Applicant) v. Consolidated Maintenance Services Limited (Respondent).

Unit: "all employees of the respondent employed in its Consolidated Building Maintenance Company Division at the Metropolitan Toronto Zoo, Scarborough, save and except foremen, persons above the rank of foreman, office and sales staff, and students employed during the school vacation period." (4 employees in the unit).

5337-73-R: International Association of Bridge, Structural and Ornamental Ironworkers Local Union 721 (Applicant) v. V S L Canada Limited (Respondent).

Unit: "all reinforcing rodmen in the employ of the respondent in

Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario save and except non-working foremen and persons above the rank of non-working foreman." (12 employees in the unit).

5340-73-R: The Civil Service Association of Ontario (Inc.) (Applicant) v. Fleetview Services Limited (Respondent) v. Employee (Objector).

Unit: "all employees of the respondent at Hamilton employed in its Fleetwood Ambulance Service Division, save and except supervisors, persons above the rank of supervisor, office staff, and persons regularly employed for not more than 24 hours per week." (15 employees in the unit).

5349-73-R: Canadian Union of Public Employees (Applicant) v. Corporation of the Township of Jaffray and Melick (Respondent).

Unit: "all outside employees of the respondent employed in its Roads Department, save and except foremen and persons above the rank of foreman." (7 employees in the unit).

5355-73-R: Brewery, Soft Drink, Distillery, Distributor and Miscellaneous Workers Local 1000 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Dominion Stores Limited (Respondent).

- and -

5356-73-R: Brewery, Soft Drink, Distillery, Distributor and Miscellaneous Workers Local 1000 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Dominion Stores Limited (Respondent).

Unit: "all employees of the respondent at its retail stores in the Township of Chatham, save and except assistant store manager, persons above the rank of assistant store manager and office staff." (70 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR THE PURPOSES OF CLARITY, THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE BAKERY DEPARTMENT MANAGER IS EXCLUDED FROM THE BARGAINING UNIT.).

(1974) 2 OLRB M.R. - PAGE 237.

5361-73-R: Kingston Typographical Union, No. 204 (Applicant) v. The Kingston Whig Standard Company Limited (Respondent).

Unit: "all employees engaged in mailing room work at the respondent's premises, 302 - 310 King Street, Kingston, Ontario, save and except circulation manager, persons above the rank of circulation manager and persons regularly employed for not more than twenty-four hours per week." (12 employees in the unit).

5369-73-R: Graphic Arts International Union Local No. 28-B, Toronto (Applicant) v. MacKinnon-Moncur Limited (Respondent).

Unit: "all employees of the respondent at Toronto, save and except foremen, persons above the rank of foreman, office and sales staff, students employed during the school vacation period, and those persons presently covered by a Board certificate (Board File No. 4535-73-R)." (11 employees in the unit).

5371-73-R: The Civil Service Association of Ontario (Inc.) (Applicant) v. Ogden Funeral Homes Ltd. (Respondent).

Unit: "all employees of the respondent employed in its Ogden Ambulance Service Division in Metropolitan Toronto, save and except supervisors, persons above the rank of supervisor, and office staff." (16 employees in the unit).

5374-73-R: The Civil Service Association of Ontario (Inc.) (Applicant) v. Cornwall General Hospital (Respondent).

Unit: "all X-Ray technologists employed by the respondent at Cornwall, save and except chief technologist and persons above the rank of chief technologist, persons regularly employed for not more than 24 hours per week, students employed during the school vacation period, office and clerical employees and all other employees covered by existing Labour Agreements." (6 employees in the unit).

5376-73-R: United Steelworkers of America (Applicant) v. Drug Trading Company Limited (Respondent) v. Employee (Objector).

Unit: "all office and clerical employees of the respondent at London, save and except supervisors, persons above the rank of supervisor, sales staff, students employed during the school vacation period, and employees covered by a subsisting agreement." (9 employees in the unit).

5377-73-R: International Union, United Plant Guard Workers of America Local 1962 (Applicant) v. Polysar Limited, Building Systems Division (Respondent).

Unit: "all security guards employed by the respondent at its plant in the Town of Milton, save and except supervisors, and persons above the rank of supervisor." (4 employees in the unit).

5378-73-R: Ontario Nurses' Association (Application) v. Renfrew Victoria Hospital (Respondent).

Unit #1: "all registered and graduate nurses engaged in a nursing capacity employed by the respondent at its Renfrew Victoria Hospital at 499 Raglan Street North, save and except head nurses, persons

above the rank of head nurse and persons regularly employed for not more than 24 hours per week." (19 employees in the unit).

Unit #2: "all registered and graduate nurses engaged in a nursing capacity by the respondent at its Renfrew Victoria Hospital at 499 Raglan Street North regularly employed for not more than 24 hours per week, save and except head nurses and persons above the rank of head nurse." (15 employees in the unit).

Unit #3: "all registered and graduate nurses engaged in a nursing capacity employed by the respondent at the Renfrew Victoria Hospital Rehabilitation Centre, 720 Raglan Street South, save and except head nurses, persons above the rank of head nurse and persons regularly employed for not more than 24 hours per week." (no employees in the unit).

Unit #4: "all registered and graduate nurses engaged in a nursing capacity employed by the respondent at the Renfrew Victoria Hospital Rehabilitation Centre, 720 Raglan Street South regularly employed for not more than 24 hours per week, save and except head nurses and persons above the rank of head nurse." (31 employees in the unit).

5381-73-R: Office & Professional Employees International Union (Applicant) v. Nipigon Red Rock Board of Education (Respondent).

Unit: "all office and clerical employees of the respondent in the Townships of Nipigon, Lyon, Stirling Lyon and Dorion, save and except the business administrator and the assistant administrator, and persons above those ranks, and persons covered by existing collective agreements binding upon the respondent." (9 employees in the unit).

5387-73-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. Environmental Technical Services Inc. (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (7 employees in the unit).

5396-73-R: International Union of Operating Engineers, Local 796 (Applicant) v. Carling O'Keefe Limited (Respondent).

Unit: "all employees employed by the Respondent at its Toronto Plant (Etobicoke) as Quality Control Laboratory Technicians, save and except Supervisors and those above the rank of Supervisor, sales, office and

clerical staff, persons regularly employed for not more than twenty-four hours per week, students employed during the school vacation period and those persons covered by subsisting collective agreements." (6 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5398-73-R: Christian Trade Unions of Canada (Local 6) (Applicant) v. G. & E. Construction Ltd. (Respondent).

Unit: "all carpenters, carpenters' apprentices and construction labourers in the employ of the respondent in the County of Wentworth including part of Township of North Dumfries annexed from Beverly Township and the Township of Nassagaweya and the Town of Burlington in the County of Halton, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

5400-73-R: The Canadian Union of Distillery Workers (Applicant) v. Hiram Walker & Sons Limited (Respondent) v. The Canadian Union of Operating Engineers Local 102 (Intervener).

Unit: "all employees of the respondent in Essex County, save and except foremen, persons above the rank of foreman, office and clerical staff, chemists, laboratory employees, plant guards and those employees covered by a subsisting collective agreement between the respondent and the intervener, The Canadian Union of Operating Engineers Local 102." (503 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR THE PURPOSES OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT ASSISTANT FOREMEN AND EMPLOYEES WHO CLEAN PLANT OFFICES, OTHER THAN EMPLOYEES WHO CLEAN NON-PLANT OFFICES OR THE RECEPTION CENTRE, ARE TO BE INCLUDED IN THE BARGAINING UNIT.).

5405-73-R: United Steelworkers of America (Applicant) v. The Pedlar People Limited (Respondent).

Unit: "all employees of the respondent company in Mississauga, save and except foremen, persons above the rank of foreman, office and sales staff." (3 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5406-73-R: United Steelworkers of America (Applicant) v. Shaw-Almex Industries Ltd. (Respondent).

Unit: "all employees of the respondent at Parry Sound, save and except supervisors, persons above the rank of supervisor, office and sales staff and students employed during the school vacation period." (47 employees in the unit).

5407-73-R: Canadian Union of Public Employees (Applicant) v. Township of Bosanquet (Respondent).

Unit: "all employees of the respondent in the Township of Bosanquet, save and except Clerk-Treasurer, Roads' Superintendent and persons above the rank of Clerk-Treasurer and Roads' Superintendent." (5 employees in the unit).

5411-73-R: The Civil Service Association of Ontario (Inc.) (Applicant) v. South Waterloo Memorial Hospital (Respondent).

Unit: "all medical laboratory technologists, medical laboratory technicians and laboratory assistants employed by the respondent in its medical laboratories at Cambridge, save and except chief technologist, persons above the rank of chief technologist, members of the medical and nursing professions, laboratory students, clerical staff, persons regularly employed for not more than 24 hours per week, students employed during the school vacation period, persons covered by a subsisting collective agreement between the respondent and Service Employees Union, Local 204, dated September 26, 1973 and persons covered by a subsisting collective agreement between the respondent and International Union of Operating Engineers, Local 772, dated September 18, 1973." (29 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5418-73-R: Canadian Union of Public Employees (Applicant) v. Corporation of the Township of Wellesley (Respondent).

Unit: "all employees of the respondent in the Township of Wellesley, save and except foremen, persons above the rank of foreman, office and clerical staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (4 employees in the unit).

5426-73-R: Amalgamated Clothing Workers of America (Applicant) v. Apex Pants Manufacturing Co. Limited (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except foremen, foreladies, persons above the rank of foreman and forelady, supervisors, office and sales staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (35 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5427-73-R: United Paperworkers International Union (Applicant) v. Standard Paper Box Ltd. (Respondent).

Unit: "all employees of the respondent at Belleville, save and except foremen, persons above the rank of foreman, office and sales staff."

(15 employees in the unit). (FOR THE PURPOSES OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE CLASSIFICATION OF DESIGNER IS INCLUDED IN THE EXCLUSION OF OFFICE AND SALES STAFF.).

5428-73-R: Labourers' International Union of North America Local 1036 (Applicant) v. A. Buttazzoni and Son Ltd. (Respondent).

Unit: "all construction labourers in the employ of the respondent in that portion of the District of Algoma south of the 49th parallel of latitude, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit).

5433-73-R: Federation of Children's Aid Staff (Applicant) v. Children's Aid Society for the District of Temiskaming (Respondent).

Unit #1: "all employees of the respondent in the District of Temiskaming, save and except supervisors, persons above the rank of supervisor, office and clerical staff, chief clerk, bookkeeper, persons regularly employed for not more than 24 hours per week, and students employed during the school vacation period." (9 employees in the unit).

Unit #2: "all office and clerical employees of the respondent in the District of Temiskaming, save and except supervisors, persons above the rank of supervisor, chief clerk, bookkeeper, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (2 employees in the unit).

5435-74-R: United Steelworkers of America (Applicant) v. Airlite Glass Insulating Limited (Respondent).

Unit: "all employees of the respondent company in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office and sales staff." (35 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5444-74-R: United Textile Workers of America (Applicant) v. Wabasso Limited, Empire Division (Respondent).

Unit: "all office, clerical and technical employees of the respondent at its Empire Division Plant at Welland, save and except supervisors and Department Heads, persons above the rank of supervisor and Department Head, Industrial Engineering personnel, Personnel Department personnel, secretary to the General Mill Superintendent and Production Controller, secretary to the Group Divisional Manager, secretary to the Divisional Controller, first aid personnel, management trainee, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (42 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5447-74-R: Teamsters' Union Local 938 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Broker Truck Leasing (Respondent).

Unit: "all employees of the respondent at Metropolitan Toronto, save and except foremen, dispatchers, persons above the rank of foreman and dispatcher, office and sales staff." (11 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5448-74-R: Warehousemen and Miscellaneous Drivers Local 419 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Rite-Pak Produce Co. Limited (Respondent).

Unit: "all employees of the respondent at Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office and sales staff, and students employed during the school vacation period." (22 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5449-74-R: Warehousemen and Miscellaneous Drivers Local 419 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Gamble Robinson Ltd. (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office and sales staff, and students employed during the school vacation period." (5 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5450-74-R: Warehousemen and Miscellaneous Drivers Local 419 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. International Fruit Distributors Ltd. (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office and sales staff, and students employed during the school vacation period." (4 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5451-74-R: Teamsters Local 879 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. A-1 Cartage & Express (Respondent).

Unit: "all drivers and mechanics in the employ of the respondent at Hamilton, save and except foremen and dispatchers, persons above the rank of foreman and dispatcher, office and sales staff, persons regularly employed for not more than twenty-four hours per week, and student employed during the school vacation period." (9 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5452-74-R: International Union of Operating Engineers Local 793 (Applicant) v. Harrison Rock & Tunnel Company Limited (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

5461-74-R: Christian Labour Association of Canada (Applicant) v. Heathrow Construction Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent in the Counties of Peterborough, Victoria and the Provisional County of Haliburton, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

5471-74-R: The United Brotherhood of Carpenters and Joiners of America, Local Union 1669 (Applicant) v. PAMO Incorporated (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the District of Thunder Bay, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit).

5481-74-R: Hotel and Restaurant Employees and Bartenders' International Union, Restaurant, Cafeteria and Tavern Employees Union, Local 254 (Applicant) v. Canterbury Grenadier Limited (Respondent).

Unit: "all employees of the respondent at its food service operations at New City Hall, Toronto, regularly employed for not more than 24 hours per week, save and except assistant manager, persons above the rank of assistant manager and head chef." (15 employees in the unit).

5485-74-R: Labourers' International Union of North America, Local 837 Hamilton, Ontario (Applicant) v. Becker Drills Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent in the Regional Municipality of Niagara and the County of Haldimand, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit).

5490-74-R: United Steelworkers of America (Applicant) v. Grace Construction Materials Ltd. (Respondent).

Unit: "all employees of the respondent at Ajax, save and except foremen, persons above the rank of foreman, office and sales staff." (6 employees in the unit).

5519-74-R: Labourers' International Union of North America, Local 183 (Applicant) v. Town Paving Co. 1965 Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except construction labourers employed on building projects, non-working foremen and persons above the rank of non-working foreman." (6 employees in the unit).

Applications Certified Subsequent to Pre-Hearing Vote

4642-74-R: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) (Applicant) v. Fruehauf Trailer Company of Canada Limited (Respondent).

Unit: "all office, clerical and technical employees of the respondent at its Dixie Manufacturing Plant, Mississauga, save and except supervisors, persons above the rank of supervisor, one secretary to each of the following: Vice-President of Sales, the Vice-President - Finance and the Plant Manager, persons employed in the Industrial Relations Department, senior buyer, secretary-stenographers to each of the following: resident engineer, the manager material control, the purchasing agent, the product manager and the assistant controller, and persons regularly employed for not more than 24 hours per week." (69 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Number of names of persons on revised voters' list		62
Number of persons who cast ballots	61	
Ballots segregated and not counted	1	
Number of ballots marked in favour of applicant	32	
Number of ballots marked against applicant	28	

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5291-73-R: The Civil Service Association of Ontario (Inc.) (Applicant) v. Wellesley Hospital (Respondent) v. International Union of Operating Engineers, Local 796 (Intervener).

Unit: "all para-Medical diagnostic personnel employed by the Hospital in Toronto, save and except Assistant Chief Technologist, persons above the rank of Assistant Chief Technologist, persons employed under research grants, students, office and clerical staff, persons regularly employed for not more than twenty-four hours per week and persons bound by subsisting collective agreements." (43 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Number of names of persons on revised voters' list		27
Number of persons who cast ballots	27	
Number of ballots marked in favour of applicant	22	
Number of ballots marked against applicant	5	

5322-73-R: Canadian Food and Allied Workers Local Union 725, chartered by The Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC (Applicant) v. Sayvette Limited (Respondent).

Unit: "all employees of the respondent at Barrie, save and except group managers, persons above the rank of group manager, Personnel Representative and security staff." (100 employees in the unit).

Number of names of persons on revised voters' list		96
Number of persons who cast ballots	70	
Number of ballots marked in favour of applicant	48	
Number of ballots marked against applicant	22	

5339-73-R: The Civil Service Association of Ontario (Inc.) (Applicant) v. Greater Welland Ambulance Service (Respondent).

Unit: "all employees of the respondent in Welland and Fort Erie, save and except supervisors, persons above the rank of supervisor, and office staff." (16 employees in the unit).

Number of names of persons on voters' list		16
Number of persons who cast ballots	15	
Number of ballots marked in favour of applicant	11	
Number of ballots marked against applicant	4	

Applications Certified Subsequent to Post-Hearing Vote

4046-73-R: Canadian Union of Industrial Employees (Applicant) v. The Gold Crest Products Limited (Respondent) v. International Woodworkers of America (Intervener).

Unit: "all employees of the respondent at Metropolitan Toronto, save and except foremen, foreladies, persons above the rank of foreman and forelady, office and sales staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (377 employees in the unit).

Number of names of persons on revised voters' list		452
Number of persons who cast ballots	388	
Number of spoiled ballots	22	
Number of ballots marked in favour of applicant	230	
Number of ballots marked in favour of intervener	136	

4678-73-R: Local 12-L, Graphic Arts International Union (Applicant) v. Newsweb Enterprise Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all lithographers, their apprentices and helpers, employed by the respondent in Willowdale, save and except non-working foremen and persons above the rank of non-working foreman, and persons regularly employed for not more than 24 hours per week." (62 employees in the unit)

Number of names of persons on voters' list		65
Number of persons who cast ballots	64	
Number of ballots marked in favour of applicant	33	
Number of ballots marked against applicant	31	

4706-73-R: Nurses' Association Plummer Memorial Public Hospital (Applicant) v. Plummer Memorial Public Hospital (Respondent).

Unit: "all registered and graduate nurses regularly employed by the respondent at Sault Ste. Marie for not more than 24 hours per week, save and except head nurses and persons above the rank of head nurse." (80 employees in the unit).

Number of names of persons on voters' list		71
Number of persons who cast ballots	41	
Number of ballots marked in favour of applicant	36	
Number of ballots marked against applicant	5	

(BARGAINING UNIT #1 - SEE BARGAINING UNITS CERTIFIED - NO VOTE CONDUCTED).

4727-73-R: Civil Service Association of Ontario (Inc.) (Applicant) v. The Etobicoke General Hospital (Respondent).

Unit: "all Clinical Instructors X-Ray, Medical Laboratory Technologists, Medical Laboratory Assistants, Mortuary Technicians, Blood Collectors, Nuclear Medicine Technicians, Radiology Technologists, ECG Technicians, EEG Technicians, Respiratory Technologists, Pharmacy Technicians, Psychometric Technicians, in the employ of the respondent, save and except Medical Laboratory Supervisors, Supervisors Nuclear Medicine, Assistant Chief X-Ray Technologists, Charge ECG Technicians, Charge EEG Technicians, Charge Respiratory Technologists, and persons above these ranks, persons regularly employed for not more than 24 hours per week and students employed for the school vacation period." (74 employees in the unit).

Number of names of persons on voters' list		75
Number of persons who cast ballots	71	
Ballots segregated and not counted	1	
Number of ballots marked in favour of applicant	44	
Number of ballots marked against applicant	26	

5006-73-R: Canadian Union of Public Employees (Applicant) v. The Ontario Cancer Treatment and Research Foundation, Ottawa Clinic (Respondent).

Unit: "all technologists and technicians employed by the respondent at Ottawa, save and except supervisors, persons above the rank of supervisor and students in training in affiliated with The Princess Margaret Hospital." (14 employees in the unit).

Number of names of persons on voters' list		13
Number of persons who cast ballots	13	
Number of ballots marked in favour of applicant	12	
Number of ballots marked against applicant	1	

5124-73-R: Christian Labour Association of Canada (Applicant) v. Bestview Holdings Limited, carrying on business as Bestview Nursing Home, Orillia (Respondent) v. Service Employees Union, Local 204, affiliated with the S.E.I.U., AF of L, C.I.O., C.L.C. (Intervener) v. Group of Employees (Objectors).

Unit: "all employees of the respondent in the City of Orillia, save and except supervisors, persons above the rank of supervisor, graduate and registered nurses, technical employees, office staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (26 employees in the unit).

Number of names of persons on revised voters' list		17
Number of persons who cast ballots	13	
Number of ballots marked in favour of applicant	1	
Number of ballots marked in favour of intervener	12	

5164-73-R: The Civil Service Association of Ontario (Inc.) (Applicant) v. Suburban Ambulance Service (Respondent).

Unit: "all employees of the respondent in Tecumseh, save and except supervisors and persons above the rank of supervisor." (22 employees in the unit).

Number of names of persons on voters' list		14
Number of persons who cast ballots	11	
Number of ballots marked in favour of applicant	11	
Number of ballots marked against applicant	0	

5272-73-R: London and District Building Service Worker's Union, Local 220, S.E.I.U. - A.F. of L. - C.I.O. - C.L.C. (Applicant) v. The Corporation of the City of St. Thomas (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at the Valleyview Home for the Aged at St. Thomas, save and except supervisors, persons above the rank of supervisor, registered nurses, persons regularly employed for not more than 24 hours per week, students employed during the school vacation period and office staff." (41 employees in the unit). (FOR THE PURPOSES OF CLARITY, THE BOARD NOTED THE FURTHER AGREEMENT OF THE PARTIES THAT THE ADJUVANT AND THE LAUNDRY OPERATOR ARE INCLUDED IN THE BARGAINING UNIT.).

(FOR THE FURTHER PURPOSES OF CLARITY, THE BOARD DECLARES THAT STUDENTS EMPLOYED ON A COOPERATIVE TRAINING PROGRAMME ARE NOT INCLUDED IN THE BARGAINING UNIT.).

Number of names of persons on revised voters' list		42
Number of persons who cast ballots	41	
Number of ballots marked in favour of applicant	27	
Number of ballots marked against applicant	14	

APPLICATIONS FOR CERTIFICATION DISMISSED DURING APRIL

No Vote Conducted

2855-72-R: Canadian Union of Public Employees (Applicant) v. York University (Respondent). (922 employees).

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3349-72-R: Labourers International Union of North America Local 837 (Applicant) v. The George Campbell Company Limited (Respondent). (7 employees).

4299-73-R: Labourers' International Union of North America, Local 183 (Applicant) v. Graham Bros. Construction Limited (Respondent) v. Group of Employees (Objectors). (70 employees).

4496-73-R: United Steelworkers of America (Applicant) v. BP Oil Limited (Respondent) v. The Employees' Association Ottawa Pipeline Terminal (Intervener). (2 employees).

4731-73-R: United Brotherhood of Carpenters and Joiners of America, Local Union 93 (Applicant) v. Baldock Engineering and Construction Limited (Respondent) v. United Brotherhood of Carpenters and Joiners of America, Local Union 2307 (Intervener). (6 employees).

4957-73-R: Labourers' International Union of North America, Local 183 (Applicant) v. C. Cosentino Construction Ltd. (Respondent). (2 employees).

5012-73-R: Labourers' International Union of North America, Local 183 (Applicant) v. Tiberini Construction and Holdings Limited (Respondent) v. Group of Employees (Objectors). (no employees).

5276-73-R: United Paperworkers International Union (Applicant) v. NCR Canada Ltd. (Respondent) v. Group of Employees (Objectors). (7 employees).

5342-73-R: Labourers' International Union of North America Local 506 (Applicant) v. Durable Drywall Limited (Respondent) v. International Brotherhood of Painters & Allied Trades, Local Union 1891 (Intervener).

Unit: "all construction labourers in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario employed on building projects, except residential building projects, but including labourers employed as helpers of bricklayers and plasterers, save and except non-working foremen and persons above the rank of non-working foreman." (9 employees in the unit).

5354-73-R: Labourers International Union of North America Local 837, Hamilton, Ontario (Applicant) v. Niagara River Construction Limited (Respondent). (3 employees).

5359-73-R: Labourers International Union of North America, Local 837 (Applicant) v. Collavino Brothers Construction Company Limited (Respondent). (7 employees).

5380-73-R: Tobacco Workers' International Union (Applicant) v. Benson & Hedges (Canada) Limited (Respondent). (114 employees).

5390-73-R: United Brotherhood of Carpenters and Joiners of America Local 249 Kingston, Ontario (Applicant) v. Blier Inc. (Respondent). (2 employees).

5392-73-R: Oil, Chemical and Atomic Workers International Union Local 9-599 (Applicant) v. Texas Refinery Corp. of Canada Limited (Respondent). (10 employees).

5421-73-R: United Brotherhood of Carpenters & Joiners of America, Local 2486 (Applicant) v. Mining Machinery & Equipment Limited (Respondent). (24 employees).

5520-74-R: Local Union 1190, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Rizzardo i Zorro (Respondent). (4 employees).

Certification Dismissed Subsequent to Pre-Hearing Vote

3989-73-R: International Woodworkers of America (Applicant) v. Regal Stationery Company Limited (Respondent) v. Group of Employees (Objectors).

Voting Constituency: "All employees of the respondent at Omemee, save and except foremen, persons above the rank of foreman, office and sales staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (72 employees).

Number of names of persons on voters' list		50
Number of persons who cast ballots	47	
Number of ballots marked in favour of applicant	22	
Number of ballots marked against applicant	25	

4873-73-R: Canadian Union of Public Employees (Applicant) v. Lakeview Manor Home for the Aged (The Corporation of the County of Ontario) (Respondent).

Voting Constituency: "All employees of the respondent at Beaverton, Ontario, save and except supervisors, persons above the rank of supervisor, professional medical staff, graduate and undergraduate nursing staff, technical staff, office staff, and students employed during the school vacation period." (65 employees).

Number of names of persons on revised voters' list		61
Number of persons who cast ballots	59	
Ballots segregated and not counted	1	
Number of ballots marked in favour of applicant	29	
Number of ballots marked against applicant	29	

5168-73-R: International Woodworkers of America (Applicant) v. Decor Wood Specialties (Respondent).

Voting Constituency: "All employees of Decor Wood Specialties in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office and sales staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (55 employees). (THE BOARD DIRECTED THAT THE BALLOT BOX CONTAINING ALL THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE BE SEALED AND THE BALLOTS NOT COUNTED PENDING THE FURTHER DIRECTION OF THE BOARD.).

Number of names of persons on revised voters' list		43
Number of persons who cast ballots	40	
Number of spoiled ballots	1	
Number of ballots marked in favour of applicant	17	
Number of ballots marked against applicant	22	

5229-73-R: United Steelworkers of America (Applicant) v. Unistrut/
Nelmanco Limited (Respondent).

Voting Constituency: "All employees of the respondent at Ajax, Ontario, save and except foremen, persons above the rank of foreman, office and sales staff." (23 employees).

Number of names of persons on revised voters' list	20
Number of persons who cast ballots	20
Number of ballots marked in favour of applicant	2
Number of ballots marked against applicant	18

5244-73-R: London and District Building Service Workers' Union, Local 220, S.E.I.U., A.F.L.-C.I.O.-C.L.C. (Applicant) v. The Sisters of St. Joseph of the Diocese of London in Ontario, as the owner and operator of St. Joseph's Hospital, London, Ontario (Respondent) v. Group of Employees (Objectors).

Voting Constituency: "All lay employees of St. Joseph's Hospital, at London, save and except professional medical staff, graduate nursing staff, undergraduate nurses, graduate pharmacists, undergraduate pharmacist, graduate dietitians, student dietitians, social workers, technical personnel (including in this exception, graduate and undergraduates: - speech therapists, audiologists, physiotherapists, occupation therapists and psychologists, psychometrists, electro encephalographists, electrical shock therapists, autopsy masters, Laboratory, Radiological, pathological, cardiologist, respiration therapy, anesthesia and glaucoma technicians and persons in training to become such technicians), supervisory, foremen, those above the rank of foreman, chief engineer, head chef, security personnel, office and clerical staff (including in this exception ward clerks, admitting clerks, receptionists, information clerks, mail clerk, cashiers, librarians and switchboard operators), persons engaged in research work, persons regularly employed for not more than twenty-four hours per week, and students employed during the school vacation periods." (571 employees).

Number of names of persons on revised voters' list	443
Number of persons who cast ballots	350
Number of spoiled ballots	2
Number of ballots marked in favour of applicant	143
Number of ballots marked against applicant	205

5283-73-R: Amalgamated Meat Cutters and Butcher Workmen of North America, A.F.L.-C.I.O.-C.L.C. (Applicant) v. Campbell Soup Company Limited (Respondent).

Voting Constituency: "All employees of the respondent in Metropolitan Toronto, save and except foremen, foreladies, persons above the rank of foreman and forelady, security guards, laboratory, inspection, stores clerks, time office, office and sales staff, seasonal employees and students employed during the school vacation period." (463 employees (THE BOARD DIRECTED THAT THE NAMES OF 26 PERSONS WHOSE NAMES APPEAR ON EITHER SCHEDULE "A" OR "D" CLASSIFIED AS "LEAD HANDS" BE PERMITTED TO VOTE AND THAT THEIR BALLOTS BE SEGREGATED AND NOT COUNTED PENDING A RULING BY THE BOARD CONCERNING THEIR ELIGIBILITY FOR INCLUSION IN THE VOTING CONSTITUENCY.)). (THE BOARD DIRECTS THAT THE BALLOT BOX CONTAINING ALL THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE BE SEALED AND THE BALLOTS NOT COUNTED PENDING THE FURTHER DIRECTION OF THE BOARD.)).

Number of names of persons on revised voters' list		426
Number of persons who cast ballots		409
Ballots segregated and not counted	10	
Number of spoiled ballots	7	
Number of ballots marked in favour of applicant	152	
Number of ballots marked against applicant	240	

5308-73-R: The Association of Commercial and Technical Employees, Local 1704, C.L.C. (Applicant) v. The Institute of Chartered Accountants of Ontario (Respondent).

Voting Constituency: "All office and clerical employees of the respondent in Metropolitan Toronto, save and except Office Manager, Controller, Director of Information, Assistant Director of Education, Director of Education & Admissions, Assistant Director of Admissions, Assistant Registrar, Registrar, Professional Practice Adviser, Adviser - Members in Industry & Members in the Public Sector, Executive Director, one Secretary to the Executive Director and persons regularly employed for not more than twenty-four hours per week." (30 employees).

Number of names of persons on voters' list		27
Number of persons who cast ballots		26
Number of spoiled ballots	1	
Number of ballots marked in favour of applicant	8	
Number of ballots marked against applicant	17	

5314-73-R: Textile Workers Union of America, AFL-CIO-CLC (Applicant) v. Jacobs & Thompson Limited (Respondent).

Voting Constituency: "All employees of the respondent at its plant in Weston, Ontario, save and except foremen, foreladies, persons above the rank of foreman, forelady, office and sales staff, persons regularly employed for not more than twenty-four hours per week, home workers and students employed during the school vacation period." (69 employees).

Number of names of persons on revised voters' list		65
Number of persons who cast ballots	51	
Number of ballots marked in favour of applicant	23	
Number of ballots marked against applicant	28	

5317-73-R: United Steelworkers of America (Applicant) v. Foster Wheeler Limited (Respondent).

Voting Constituency: "All office, clerical and technical employees of the respondent at St. Catharines, save and except professional engineers, salesmen, supervisors and foremen and persons above the rank of supervisor and foreman, plant guards, confidential secretaries to the following, Chairman of the Board, President, Vice-Presidents, Secretary-Treasurer, Manager of Manufacturing, Export Sales Manager, students hired during the school vacation period, Industrial Relations Department staff, and employees covered by subsisting Collective agreements between the respondent and the following Trade Unions; United Steelworkers of America, Local 6519; United Steelworkers of America, Local 6595; Draftsmen's Association of Ontario, Local 164, American Federation of Technical Engineers AF of L - C.I.O. - CLC; International Brotherhood of Boiler-makers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers AFL-CIO-CLC." (79 employees). (...THE BOARD DIRECTS THAT THE BALLOT BOX CONTAINING ALL THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE BE SEALED AND THE BALLOTS NOT COUNTED PENDING THE FURTHER DIRECTION OF THE BOARD.).

Number of names of persons on revised voters' list		80
Number of persons who cast ballots	80	
Number of ballots marked in favour of applicant	18	
Number of ballots marked against applicant	62	

5351-73-R: International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, U.A.W. (Applicant) v. Budd Automotive Company of Canada Limited (Respondent).

Voting Constituency: "All office, clerical and technical employees of the respondent in its offices at Kitchener, Ontario, save and except supervisors, persons above the rank of supervisor, Secretary to the President, Secretary to Plant Manager, Secretary to the Controller, all persons employed in the Industrial Engineers Department and in the Employee Relations Department, persons regularly employed for not more than twenty-four hours per week, students employed during the school vacation period and students employed on a Co-operative Training Programme." (98 employees). (... THE BOARD DIRECTS THAT THE BALLOT BOX CONTAINING ALL THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE BE SEALED AND THE BALLOTS NOT COUNTED PENDING THE FURTHER DIRECTION OF THE BOARD.).

Number of names of persons on voters' list		81
Number of persons who cast ballots		80
Ballots segregated and not counted	3	
Number of ballots marked in favour of applicant	15	
Number of ballots marked against applicant	62	

5360-73-R: United Steelworkers of America (Applicant) v. Keene Corporation of Canada Limited (Respondent).

Voting Constituency: "All employees of Keene Corporation of Canada Limited in the Regional Municipality of Cambridge, save and except foremen, persons above the rank of foreman, office and sales staff, quality control personnel and students employed during the school vacation period." (25 employees).

Number of names of persons on revised voters' list		22
Number of persons who cast ballots		22
Number of ballots marked in favour of applicant	7	
Number of ballots marked against applicant	15	

Certification Dismissed Subsequent to Post-Hearing Vote

2782-73-R: Diamond "Z" Association (Applicant) v. Zehr's Markets Limited (Respondent) v. Retail Clerks International Association (Intervener).

Unit #1: "all employees of the respondent in its retail stores in the Town of Fergus, save and except store managers, and persons above the rank of store manager." (71 employees in the unit).

Number of names of persons on revised voters' list		28
Number of persons who cast ballots	19	
Number of ballots marked in favour of applicant	8	
Number of ballots marked against applicant	11	

Unit #2: "all employees of the respondent in its retail stores in that portion of Cambridge formerly known as the Town of Hespeler, save and except store managers and persons above the rank of store manager." (48 employees in the unit).

Number of names of persons on voters' list		55
Number of persons who cast ballots	35	
Number of ballots marked in favour of applicant	6	
Number of ballots marked against applicant	29	

(BARGAINING UNIT #3 - SEE BARGAINING UNITS CERTIFIED - NO VOTE CONDUCTED).

4649-73-R: Local Union No. 7, Ottawa, Ontario, Marble Masons, Tile Setters and Terrazzo Workers affiliated with the Bricklayers, Masons and Plasterers International Union of America (Applicant) v. Hamelin Tile & Flooring Limited (Respondent).

Unit: "all marble masons and marble masons' apprentices, all tile setters and tile setters' apprentices in the employ of the respondent, working in the Regional Municipality of Ottawa-Carleton and the United Counties of Prescott and Russell, save and except non-working foremen and persons above the rank of non-working foreman." (9 employees in the unit).

Number of names of persons on voters' list		6
Number of persons who cast ballots	5	
Number of ballots marked in favour of applicant	2	
Number of ballots marked against applicant	3	

4756-73-R: United Cement, Lime and Gypsum Workers International Union, A.F.L., C.I.O., C.L.C. (Applicant) v. Brooklin Concrete Products Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent in the Town of Whitby, save and except foremen, persons above the rank of foreman, persons above

the rank of foreman, and office and sales staff." (23 employees in the unit).

Number of names of persons on revised voters' list		19
Number of persons who cast ballots	20	
Ballots segregated and not counted	1	
Number of spoiled ballots	2	
Number of ballots marked in favour of applicant	4	
Number of ballots marked against applicant	13	

5119-73-R: Canadian Union of Public Employees (Applicant) v. North Bay Public Library Board (Respondent).

Unit #2: "all employees of the respondent at North Bay regularly employed during the school vacation period, save and except chief librarian, persons above the rank of chief librarian, treasurer, and executive secretary to the chief librarian." (5 employees in the unit). (FOR THE PURPOSES OF CLARITY THE BOARD NOTED THE FURTHER AGREEMENT OF THE PARTIES THAT DEPARTMENT HEADS ARE INCLUDED IN THE BARGAINING UNITS AND THAT EMPLOYEES CLASSIFIED AS PAGES ARE INCLUDED IN BARGAINING UNIT #2.).

Number of names of persons on voters' list		13
Number of persons who cast ballots	13	
Number of ballots marked in favour of applicant	6	
Number of ballots marked against applicant	7	

(BARGAINING UNIT #1 - SEE BARGAINING UNITS CERTIFIED - NO VOTE CONDUCTED)

5232-73-R: Labourers' International Union of North America, Local 493 (Applicant) v. Mascioli Construction Company Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent within a fifty mile radius of the Timmins Federal Building, save and except non-working foremen, persons above the rank of non-working foreman and persons covered by collective agreements between the respondent and the International Union of Operating Engineers Local 793, dated September 1, 1972, and between the respondent and the Teamsters' Local Union No. 230, Ready Mix, Building Supply, Hydro and Construction Drivers, Warehousemen and Helpers, made on November 30, 1972." (9 employees in the unit).

Number of names of persons on voters' list		10
Number of persons who cast ballots	9	
Number of ballots marked in favour of applicant	4	
Number of ballots marked against applicant	5	

5323-73-R: Retail, Wholesale and Department Store Union, AFL:CIO:CLC (Applicant) v. The Book Cellar Ltd., and The Book Cellar (Yorkville) Limited (Respondents) v. Group of Employees (Objectors).

Unit: "all employees of the respondents at their retail stores in Metropolitan Toronto, save and except manager, and persons above the rank of manager." (5 employees in the unit).

Number of names of persons on revised voters' list		16
Number of persons who cast ballots	16	
Number of ballots marked in favour of applicant	8	
Number of ballots marked against applicant	8	

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5358-73-R: Canadian Union of Operating Engineers (Applicant) v. A. E. LePage Limited (Respondent). (5 employees).

5362-73-R: United Cement, Lime and Gypsum Workers International Union A.F.L., C.I.O., C.L.C. (Applicant) v. Roberts Haulage Limited (Respondent). (13 employees).

5404-73-R: Labourers' International Union of North America Local 506 (Applicant) v. Progress Masonry (Respondent). (4 employees).

5423-73-R: Central Ontario District Council United Brotherhood of Carpenters and Joiners of America (Applicant) v. Mid-Northern Developments Limited (Respondent). (2 employees).

5496-74-R: United Brotherhood of Carpenters and Joiners of America, Local Union 1669 (Applicant) v. John Brook and Son Ltd. (Respondent). (5 employees).

5510-74-R: Carpenters' District Council of Toronto and vicinity on behalf of Local Unions #27; #666; #681; #1133; #1963; #3227; #3233 of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. Egord Management Limited (Respondent). (2 employees).

5516-74-R: Laborers' International Union of North America Local 247 (Applicant) v. W. A. Stephenson Construction Company Limited (Respondent) (5 employees).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED OF
DURING APRIL

4176-73-R: Victor Naworski (Applicant) v. United Brotherhood of Carpenters and Joiners of America (Respondent) v. Minaki Marina (Intervener). (3 employees). (DISMISSED).

5139-73-R: Robert L. Robbins (Applicant) v. United Steelworkers of America (Respondent) v. Canadian Phoenix Steel Products Ltd. (Intervener). (GRANTED).

Unit: "all employees of Canadian Phoenix Steel Products Ltd. at its plant located within a twenty-five mile radius line drawn on the M.T.P.B. February, 1972 Figure 2 Map signed for identification by W. Grisdale and W. Longridge for the Company and Union, respectively, save and except: office and clerical staff, draughtsmen and engineering personnel, laboratory technicians, non-destructive testing technicians, plant guards, office janitors and supervisors with authority to hire or fire." (16 employees in the unit).

Number of names of persons on revised voters' list	18
Number of persons who cast ballots	18
Number of ballots marked in favour of respondent	2
Number of ballots marked against respondent	16

5326-73-R: Wood, Wire & Metal Lathers' International Union, Local #147, Winnipeg (Applicant) v. The United Brotherhood of Carpenters and Joiners of America, Local 1669, Kenora (Respondent). (5 employees (DISMISSED)).

5379-73-R: William Prienski, John Filippelli and Burt Lindle, a Group of employees employed by Sunnybrook Food Market (Keele) Limited (Applicant) v. Warehousemen and Miscellaneous Drivers Union, Local 419 (Respondent) v. Sunnybrook Food Market (Keele) Limited (Intervener). (3 employees). (GRANTED).

5384-73-R: Ilona Felfoldi (Applicant) v. Boot & Shoe Workers Union Loc. 233 (Respondent). (50 employees). (DISMISSED).

5401-73-R: Lazaros Terzis (Applicant) v. Local 197 of the Hotel and Restaurant Employees and Bartenders International Union, A. F. L., C. I. O. (Respondent) v. Windsor Hotel (Hamilton) Limited (Intervener). (10 employees). (DISMISSED).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING

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5413-73-U: Crane Canada Limited (Applicant) v. Frank Shillolo, Gordon Moore, John Ferguson, George Sapwell, L. Sherwood, and International Association of Machinists and Aerospace Workers, Lodge 1550 (Respondents). (WITHDRAWN).

5422-73-U: Canadian Johns Manville Company Limited (Applicant) v. Those Persons Named in Schedule "A" Attached Hereto (Respondents). (WITHDRAWN).

5476-74-U: Charles Huffman Limited (Applicant) v. Keith Brunton, Frank Matesak, Frank Allday, Dave Watson, and Garland J. Wilson and The United Brotherhood of Carpenters and Joiners of America, Local 1450 (Respondents). (WITHDRAWN).

5483-74-U: Charles Huffman Limited (Applicant) v. The United Brotherhood of Carpenters and Joiners of America, Local 1450 (Respondent). (WITHDRAWN).

5491-74-U: E. G. M. Cape & Co. Ltd. (Applicant) v. The Ontario Provincial Conference of the Bricklayers, Masons & Plasterers International Union of America, Local Union No. 3, and Brian Strickland (Respondents). (WITHDRAWN).

5505-74-U: Stradiotto Bros. Construction Ltd. (Applicant) v. The Ontario Provincial Conference of the Bricklayers, Masons and Plasterers International Union of America, Local Union No. 3, and Brian Strickland (Respondents). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING APRIL

5296-73-U: United Brotherhood of Carpenters and Joiners of America, Local Union 2679 (Applicant) v. Mason Windows Limited (Respondent). (WITHDRAWN).

5366-73-U: Operative Plasterers' & Cement Masons' International Association, Local 48 (Applicant) v. Trident Drywall Limited (Respondent). (DISMISSED).

5367-73-U: Operative Plasterers' & Cement Masons' International Association, Local 48 (Applicant) v. The International Brotherhood of Painters and Allied Trades, Local 1891 (Respondent). (DISMISSED).

5403-73-U: Canadian Food and Allied Workers, Local Union 725, Chartered by The Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC (Applicant) v. Sayvette Limited (Respondent). (WITHDRAWN).

5414-73-U: Crane Canada Limited (Applicant) v. Frank Shillolo, Gordon Moore, John Ferguson, George Sapwell, and L. Sherwood (Respondents). (WITHDRAWN).

5415-73-U: Crane Canada Limited (Applicant) v. Frank Shillolo, Gordon Moore, John Ferguson, George Sapwell, L. Sherwood, and International Association of Machinists and Aerospace Workers, Local 1550 (Respondents). (WITHDRAWN).

5420-73-U: Canadian Union of Public Employees (Applicant) v. Middlesex-London District Health Unit (Respondent). (WITHDRAWN).

COMPLAINTS UNDER SECTION 79 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING

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9202-64-U: Lucien Cola (Complainant) v. The KVP Company Limited (Respondent). (TERMINATED).

10174-64-U: The Canadian Brotherhood of Railway, Transport, and General Workers (Complainant) v. Gibsco Transport Ltd. (Respondent). (TERMINATED).

10638-65-U: United Packinghouse, Food & Allied Workers (Complainant) v. The Quaker Oats Company of Canada Limited, Pet Foods Division (Trenton Plant) (Respondent). (TERMINATED).

10644-65-U: United Packinghouse, Food & Allied Workers (Complainant) v. The Quaker Oats Company of Canada Limited, Pet Foods Division (Trenton Plant) (Respondent). (TERMINATED).

11359-65-U: Anton Franz Gutsfeld (Complainant) v. International Harvester Company of Canada Limited (Respondent) v. Mr. John Bellingham, Mr. John Rope, Mr. John Epps, Mr. Bill Loyd, All as named are members of the Committee Local Union 2868 (Respondents). (TERMINATED).

3821-73-U: Federation of Children's Aid Staffs (Complainant) v. Catholic Children's Aid Society of Metropolitan Toronto (Respondent). (DISMISSED).

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4221-73-U: Association of Commercial and Technical Employees, Local 1704, C.L.C. (Complainant) v. Comtech Group Limited (Respondent). (DISMISSED).

4967-73-U: Nurses' Association Norfolk General Hospital (Complainant) v. Norfolk Hospital Association (Respondent). (TERMINATED).

4977-73-U: Kenneth Thomas Robertson (Complainant) v. Victory Soya Mills Limited, International Chemical Workers Union Local 247, Vic Beyer, Local Union President, and Thomas Pellerin, Chief Steward, Local 247 (Respondents). (DISMISSED).

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5050-73-U: John Bell (Complainant) v. Amalgamated Metal Industries Limited (Respondent).

- and -

5051-73-U: John Bell (Complainant) v. International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO (Respondent). (DISMISSED).

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5094-73-U: Canadian Food and Allied Workers Local Union 725, chartered by The Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC (Complainant) v. Sayvette Limited (Respondent). (WITHDRAWN).

5141-73-U: James Saad (employee) (Complainant) v. Management, Great Lakes Forgings; Local 195 U.A.W.; and U.A.W. Stewards, G.L.F. (Respondents). (WITHDRAWN).

5161-73-U: Warehousemen and Miscellaneous Drivers Local Union 419 (Complainant) v. Lyman Tube Division, Jannock Industries Limited (Respondent). (GRANTED).

5231-73-U: United Steelworkers of America (Complainant) v. Anko Metal Products Ltd. (Respondent). (WITHDRAWN).

5237-73-U: Riccardo Pace (Complainant) v. United Electrical, Radio and Machine Workers of America, Local 523 (Respondent). (DISMISSED).

(1974) 2 OLRB M.R. - PAGE 262.

5257-73-U: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW) (Complainant) v. Robert Hunt Company Limited (Respondent). (TERMINATED).

5258-73-U: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW) (Complainant) v. Robert Hunt Company Limited (Respondent). (TERMINATED).

5402-73-U: Canadian Food and Allied Workers, Local Union 725, Chartered by The Amalgamated Meat Cutters and Butcher Workmen of North

America, AFL-CIO-CLC (Complainant) v. Sayvette Limited (Respondent) (WITHDRAWN).

5440-74-U: R. D. Ross (Complainant) v. Abitibi Paper Company Ltd. Fort William Division (Respondent). (WITHDRAWN).

5463-74-U: "Former Clock #602" R. (Glenn) Smith (Sr.) (Complainant) v. Canadian Chromalox Co. Ltd. (Respondent). (WITHDRAWN).

5560-74-U: Minnie Obuchouski (Complainant) v. Fur, Leather, Shoe & Allied Workers Union, Local 82 (Respondent). (WITHDRAWN).

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5312-73-M: Lois Oosterhoff (Applicant) v. Local Union No. 839 Canadian Union of Public Employees (Respondent Trade Union) v. Chedoke Hospitals (Respondent Employer). (DISMISSED).

5329-73-M: Harry Mulder (Applicant) v. Retail, Wholesale and Department Store Union Local 440, CIO-CLC (Respondent Trade Union) v. Smith's Dairy Limited (Respondent Employer). (GRANTED).

APPLICATIONS UNDER SECTION 55 DISPOSED OF DURING APRIL

5035-73-R: The Canadian Union of Public Employees and its Local 132 (Applicant) v. The Corporation of the Regional Municipality of Durham (Respondent) v. Group of Employees (Objectors). (GRANTED).

Voting Constituency: "All employees of the respondent at its homes for the aged known as Lakeview Manor, Fairview Lodge and Hillsdale Manor, save and except Department Heads, persons above the rank of Department Heads, office staff, registered nurses, charge nurse - Bed Care Section, first cook and supervisor - Kitchen Section, second cook and supervisor - Kitchen Section."

Number of names of persons on revised voters' list		362
Number of persons who cast ballots	319	
Number of spoiled ballots	1	
Number of ballots marked in favour of applicant	238	
Number of ballots marked against applicant	80	

5127-73-R: The Canadian Union of Public Employees (Applicant) v. The Corporation of the Township of Uxbridge (Respondent) v. Group of Employees (Objectors). (GRANTED).

Unit: "all employees of the respondent, save and except roads superintendent, those above the rank of roads superintendent, office, clerical and technical staff."

Number of names of persons on voters' list	19
Number of persons who cast ballots	18
Number of ballots marked in favour of applicant	12
Number of ballots marked against applicant	6

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4735-73-M: United Steelworkers of America (Applicant) v. The W. S. Tyler Company of Canada Limited (Respondent). (TERMINATED).

5109-73-M: Canadian Union of Public Employees and its Local 1106 (Applicant) v. The Queensway General Hospital (Respondent). (DISMISSED).

5268-73-M: Toronto Newspaper Guild, Local 87 (Applicant) v. Preston and Sons Limited, Brantford, (The Brantford Expositor) (Respondent). (DISMISSED).

5346-73-M: Canadian Union of Public Employees (Trade Union) v. The Corporation of the City of Thunder Bay (Employer). (WITHDRAWN).

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5324-73-R: Canadian Union of Public Employees (Applicant) v. Welland & District Humane Society S.P.C.A. (Respondent). (REQUEST DENIED).

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4812-73-U: John Budd (Complainant) v. United Paperworkers International Union Local 646 and Kruger Pulp and Paper Co. Limited (Packaging Div.) Rexdale (Respondents). (REQUEST DENIED).

5213-73-U: Parviz Khatib-Zanjani (Complainant) v. Jacob & Thompson Limited (Respondent). (REQUEST DENIED).

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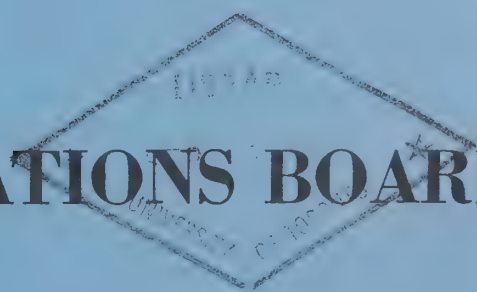
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Monthly Report

ONTARIO LABOUR RELATIONS BOARD



ONTARIO LABOUR RELATIONS BOARD REPORTS

A MONTHLY SERIES OF DECISIONS FROM THE

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5297-73-R: Graduate Assistants' Association (Applicant) v. GOVERNING COUNCIL OF THE UNIVERSITY OF TORONTO (Respondent) v. Service Employees Union, Local 204 (Intervener).

BEFORE: Frank V. Boscariol, Vice-Chairman, and Board Members A. Main and J.E.C. Robinson, Q.C.

APPEARANCES AT THE HEARING: M. Levinson, A. Stanley and M. O'Keefe for the applicant; W. Cook, J. H. Parker and R. F. Brown for the respondent; no one appearing for the intervener.

DECISION OF VICE-CHAIRMAN FRANK V. BOSCARIOL AND BOARD MEMBER A. MAIN: May 1, 1974.

1. The name "University of Toronto" appearing in the style of cause of this application as the name of the respondent is amended to read: "Governing Council of the University of Toronto".

2. The applicant has requested that a pre-hearing representation vote be taken.

3. Having carefully reviewed the representations of the parties at the hearing of this matter on April 29, 1974, it appears to the Board on an examination of the records of the applicant and the records of the respondent that not less than thirty-five per cent of the employees of the respondent in the voting constituency hereinafter described were members of the applicant at the time the application was made.

4. The Board directs that a pre-hearing representation vote be taken of the employees of the respondent in the following voting constituency:

All teaching assistants, teaching fellows, demonstrators, tutors, markers, instructors and laboratory assistants who are undergraduate students and graduate students in the School of Graduate Studies of the University of Toronto.

5. The Board directs that the ballot box containing all the ballots cast in the pre-hearing representation vote be sealed and not counted pending the further direction of the Board.

6. All employees of the respondent in the voting constituency on the 14th day of April, 1974, who have not voluntarily terminated their employment or who have not been discharged for cause between the 14th day of April, 1974 and the date the vote is taken will be eligible to vote.

7. Voters will be asked to indicate whether or not they wish to be represented by the applicant in their employment relations with the respondent.

8. The matter is referred to the Registrar.

DECISION OF BOARD MEMBER J.E.C. ROBINSON, Q.C.: May 1, 1974.

I dissent.

This is an application wherein the applicant requests a pre-hearing representation vote, within the provisions of section 8 of The Labour Relations Act.

Section 8(2) of the Act states:

Upon such a request being made, the Board may determine a voting constituency and, if it appears to the Board on an examination of the records of the trade union and the records of the employer that not less than 35 per cent of the employees in the voting constituency were members of the trade union at the time the application was made, the Board may direct that a representation vote be taken among the employees in the voting constituency.

There is little doubt from the correspondence forwarded by the respective parties, together with their representations at the hearing that there are complex issues involved with respect to the composition of the bargaining unit. Indeed the applicant changed its proposed description from that contained in the application and at the hearing added a number of other persons to the latter suggested unit.

On the basis of its final unit, the applicant submitted that there were approximately 1900 persons in its unit whereas the respondent suggested that there were persons in excess of 3000 in such unit.

In addition the respondent suggested that in view of the usual turnover at the end of a school year, which turnover the applicant estimated to be between 25% and 35%, the vote should be postponed until the new term in the fall or should be turned into an ordinary application for certification. That suggestion was made on the basis that if the vote were taken immediately, some of those persons voting now would have left by next fall and would be determining the wishes of a substantial number of future employees who will not be present in the unit determined until the fall. Indeed there is somewhat of a similarity

in this thinking to that express by the Board in its policy of "build up".

Whatever these considerations may be, there is little doubt that the issues involved with respect to the composition of the bargaining unit are complex in the extreme.

The Board has already given expression to this type of problem in the past. In Howard Furnace Limited Case (1961) OLRB M.R. July at p98, the Board endorsed the record as follows:

"Having regard to the complexity of the issues involved with respect to the composition of the bargaining unit the Board finds that this is not an appropriate case in which a pre-hearing vote should be directed. Therefore the Board denies the applicant's request for a pre-hearing representation vote and directs the Registrar to fix a new terminal date for the application in accordance with section 2 of the Board's Rules of Procedure and to effect the services provided for in section 5 of those Rules."

Accordingly, having regard to the complexity of the issues involved with respect to the composition of the bargaining unit, and having regard to the fact that I am unable to say upon the representations made and the material furnished, that it appears that not less than 35 per cent of the employees in the voting constituency were members of the applicant at the time the application was made, (as I am required to do by the Act), I would have denied the applicant's request for a pre-hearing representation vote.

5217-73-U: David Beaton (Complainant) v. General Truck Drivers' Union, Local 938 (Respondent) v. CONSOLIDATED FASTFRATE LTD. (Intervener).

BEFORE: D.E. Franks, Vice-Chairman, and Board Members A. Main and J.E.C. Robinson, Q.C.

APPEARANCES AT THE HEARING: David Beaton, Connie Backhouse and Barbara Robin for the complainant; Maurice A. Green and Val Neal for the respondent; R.C. Fillion, D.R. Freeman and B. Singleton for the intervener.

DECISION OF THE BOARD: May 3, 1974.

1. The name "General Truck Drivers Union, Local 938" appearing in the style of cause of this application as the name of the respondent is amended to read: "General Truck Drivers' Union, Local 938".

2. The intervener in the present case operates what is termed a freight forwarding business. The intervener has terminals in Toronto, Winnipeg, Regina, Saskatoon, Edmonton, Calgary and Vancouver. The operation at each terminal is similar. At each terminal employees of the intervener use trucks to pick up freight from various customers. The freight is transported to the terminal where it is unloaded by various dock workers in the employ of the intervener. At the terminal the freight is sorted and then transferred to railway cars. The freight is then delivered by rail to another terminal where it is unloaded and then delivered by truck to various destinations. The company only moves freight from east to west from the Province of Ontario to various western Provinces as far as British Columbia. Each of the terminals is serviced by a CPR rail line and the freight is transferred between the terminals by the CPR. Indeed, the terminals are owned by the CPR. However, they are leased on a long term basis to Consolidated Fastfrate Ltd. There is only one terminal in the Province of Ontario although for a short time there had been another terminal in Kitchener; however, this was closed and the terminal in Toronto is the only one operating in the Province of Ontario. It is thus clear that all freight handled by the Toronto terminal is shipped out of the Province of Ontario.

3. The employees of the intervener at Toronto are all residents of the Province of Ontario and they do not in the course of their employment with the intervener cross any provincial boundaries. The employees are bound by a collective agreement between the respondent and the intervener and it is with respect to the administration of that collective agreement that the complainant has made a complaint under section 60 of The Labour Relations Act.

4. Both the respondent and the intervener have raised the issue that the operation of the intervener does not fall within the legislative competence of the Province of Ontario and therefore this Board is without jurisdiction to hear this complaint. The intervener and the respondent rely on a decision of this Board in H'WK Forwarding (1970) March OLRB Mthly. Rep. 1450 where, with respect to a similar but not identical operation, the Board applied the Eastern Canada Stevedoring Co. Ltd. case (1955) 3 D.L.R. 721, to the dock operation of a forwarding company. The Board therefore found that the operation was not within the jurisdiction of the Province of Ontario. The complainant argues that the intervener's undertaking in the present case falls solely within the Province of Ontario because the employees do not cross any provincial boundaries. The complainant further distinguishes the Eastern Canada Stevedoring Co. Ltd. case *supra*, on the grounds that the work performed at the Toronto terminal is not intimately connected with the work or undertaking joining various Provinces. We find we cannot accept the argument of the complainant in the present case. That argument is based on a mistaken characterization of the intervener's undertaking. The undertaking is not simply to load freight

cars in the Province of Ontario, but to deliver freight from a customer in Ontario to a customer in a western Province, and as such it is an undertaking which connects Provinces. The undertaking therefore falls within that class of undertaking referred to in section 92(10)(a) of The British North America Act, and is thus excepted from the legislative competence of the Legislature of the Province of Ontario.

5. The complainant also argued that since section 60 of the Act, which empowers a duty of fair representation, does not have an equivalent provision in the Canada Labour Code the Board ought to consider the duty of fair representation as a legislative field not occupied by the Federal Government and apply section 60 to a Federal undertaking. It is clear, however, that the Federal Government has occupied the field of labour relations and it is also clear that the duty imposed by section 60 of the Act is part of the overall legislative scheme governing labour relations in the Province of Ontario. The fact that the Government of Canada has not included such a provision in its legislative scheme does not mean that this is a legislative field unoccupied by the Federal Government. We find we must therefore reject this argument of the complainant.

6. Having regard to the above reasons we are of the opinion that the Board is without jurisdiction to entertain the present complaint and this application is therefore terminated.

5247-73-R: Health Sciences Association of Metropolitan Toronto (Applicant) v. THE BOARD OF GOVERNORS OF THE RIVERDALE HOSPITAL (Respondent) v. Canadian Union of Public Employees, Local 79 (Intervener).

BEFORE: Rory F. Egan, Alternate Chairman, and Board Members J. D. Bell and O. Hodges.

APPEARANCES AT THE HEARING: Michael Gordon and Kathleen Allen for the applicant; no one for the respondent; Harold F. Caley, Fred Taylor, John King and Mary Cornish for the intervener.

DECISION OF THE BOARD: May 6, 1974.

. . .

2. The applicant seeks certification as bargaining agent for all physiotherapists, occupational therapists, inhalation therapists, speech therapists and clinical psychologists in the employ of the respondent in the Municipality of Metropolitan Toronto.

3. The persons whom the applicant seeks to represent are included in an existing bargaining unit for which the intervener holds bargaining rights. These rights were originally acquired through certification by

the Board. The employees concerned have been covered by collective agreements made between the intervener and the respondent. The latest agreement ran until December 31, 1973. It is the contention of the intervener that in view of the foregoing the bargaining unit applied for by the applicant is inappropriate.

4. The intervener entered into negotiations with the respondent for renewal of the collective agreement in accordance with the terms thereof. On January 25, 1974 the Minister appointed a conciliation officer. Meetings were held with the officer on February 14 and February 27, 1974.

5. The intervener, relying upon the foregoing state of facts, alleged that the present application is untimely having regard to the provisions of sections 45 and 53(2) of the Act.

6. Section 45 provides:

45.-(1) Either party to a collective agreement may, within the period of ninety days before the agreement ceases to operate, give notice in writing to the other party of its desire to bargain with a view to the renewal, with or without modifications, of the agreement then in operation or to the making of a new agreement.

(2) A notice given by a party to a collective agreement in accordance with provisions in the agreement relating to its termination or renewal shall be deemed to comply with subsection 1.

(3) Where notice is given by or to an employers' organization that has a collective agreement with a trade union or council of trade unions, it shall be deemed to be a notice given by or to each member of the employers' organization who is bound by the agreement or who has ceased to be a member of the employers' organization but has not notified the trade union or council of trade unions in writing that he has ceased to be a member.

(4) Where notice is given by or to a council of trade unions, other than a certified council of trade unions, that has a collective agreement with an employer or employers' organization, it shall be deemed to be a notice given by or to each member or affiliate of the council of trade

unions that is bound by the agreement or that has ceased to be a member or affiliate of the council of trade unions but has not notified the employer or employers' organization in writing that it has ceased to be a member or affiliate.

7. Section 53(2) provides:

53.-(2) Where notice has been given under section 45 and the Minister has appointed a conciliation officer or a mediator, no application for certification of a bargaining agent of any of the employees in the bargaining units as defined in the collective agreement and no application for a declaration that the trade union that was a party to the collective agreement no longer represents the employees in the bargaining unit as defined in the agreement shall be made after the date when the agreement ceased to operate or the date when the Minister appointed a conciliation officer or a mediator, whichever is later, unless, following the appointment of a conciliation officer or a mediator, if no collective agreement has been made,

- (a) at least twelve months have elapsed from the date of the appointment of the conciliation officer or a mediator; or
- (b) a conciliation board or a mediator has been appointed and thirty days have elapsed after the report of the conciliation board or the mediator has been released by the Minister to the parties; or
- (c) thirty days have elapsed after the Minister has informed the parties that he does not consider it desirable to appoint a conciliation board,

whichever is later.

8. The applicant argues that section 53(2) is not available to the intervener. The basis for this assertion is the fact that the collective agreement was executed on April 5, 1973 and was to continue in effect until December 31, 1973.

9. The applicant submits that the collective agreement, notwithstanding the fact that the wage schedules refer to increases to be

effective as far back as February 1, 1973, is an agreement which provides for its operation for a term of less than one year. That being the case, the applicant submitted, the collective agreement falls within the ambit of section 44(1) of the Act which provides:

44.-(1) If a collective agreement does not provide for its term of operation or provides for its operation for an unspecified term or for a term of less than one year, it shall be deemed to provide for its operation for a term of one year from the date that it commenced to operate.

10. The applicant argues that by virtue of section 44(1) the collective agreement must be deemed to operate for a term of one year from the date upon which it was executed, namely April 5, 1973; that its operative year ends, therefore, on April 4, 1974, and that consequently the application is timely. The applicant further maintains that the notice to bargain given under section 49 and the subsequent appointment of the conciliation officer were based upon an erroneous premise with respect to the term of the agreement and that hence the appointment of the conciliation officer cannot be raised as a bar to the present application.

11. We propose to deal first with the question of the bargaining unit sought by the applicant. As already observed, the classifications which the applicant names in its proposed bargaining unit have been and are included in the bargaining unit presently represented by the intervener. The collective agreement which expired on December 31, 1973 contains specific reference to these classifications in the wage schedules. Three of the classifications together with registered nurses were in fact treated differently in the agreement in that the effective date of their wage rates is fixed at April 15, 1973 whereas the others are effective February 1, 1973. The explanation offered for the difference in effective dates was that the classifications which the applicant seeks to represent were given higher rate increases necessitating an adjustment in effective dates.

12. The applicant is seeking to carve out part of the bargaining unit represented and bargained for by the intervener. The evidence establishes that the intervener has not been neglectful in any way of the interests of the group and, as indicated above, made special arrangements with respect to increases for some of them in the last agreement. Even if the applicant were a craft union within the meaning of section 6(2) of the Act, the Board would not be required to allow the carving out proposed by the applicant in the circumstances revealed by the evidence in this case. In the present case, therefore, where the applicant is not a craft union and there is a history of proper representation, the Board will not disturb the existing bargaining unit and permit the applicant to extract the classifications

it seeks to represent (see S. Anglin Co. Limited Case, OLRB Monthly Report, May 1970, p. 210).

13. The Board therefore finds that the bargaining unit proposed by the applicant is not appropriate for collective bargaining.

14. In view of the foregoing finding, it becomes unnecessary for the Board to deal with the question of timeliness.

15. The application is accordingly dismissed.

5079-73-U: Eric Britnell (Complainant) v. INTERNATIONAL UNION OF ELECTRICAL WORKERS LOCAL 523 (Respondent) v. RCA Limited, Prescott, Ontario (Intervener).

BEFORE: Frank V. Boscarion, Vice-Chairman, and Board Members J. D. Bell and P. J. O'Keeffe.

APPEARANCES AT THE HEARING: E. Britnell and J.F. Pap for the complainant; G. Vanrijt for the respondent; L. C. Ward and M. Marin for the intervener.

DECISION OF THE BOARD: May 7, 1974.

1. This is a complaint filed under the provisions of Section 79 of The Labour Relations Act wherein the complainant, Eric Britnell, alleges that he has been dealt with by the respondent trade union contrary to the provisions of Section 60 of the said Act.

2. The relief sought in these proceedings is in relation to two grievances which were processed by the respondent on behalf of Britnell up to the fourth step of the grievance procedure as provided for in the collective agreement entered into between the respondent trade union and the intervener. These grievances relate to a verbal warning concerning absenteeism entered upon Britnell's work record on February 14, 1973, and a written warning relating to absence without leave on September 7, 1973. As of the date of the hearing of this complaint on April 11, 1974, the respondent was actively pursuing through the arbitration process, two further disciplinary actions issued against the complainant, namely, Britnell's subsequent work suspension and his ultimate discharge by the intervener effective February 3, 1974. On December 4, 1973, Britnell had also filed a grievance with the intervener in relation to a bomb threat incident which had taken place at the plant. The respondent did not proceed further with this grievance once it had been successful in obtaining the monetary relief that Britnell had sought therein. Britnell had also requested in this grievance that the intervener establish a firm policy concerning this type of eventuality. This request was subsequently superceded by a policy grievance filed by the respondent in this regard.

3. Dealing with the two grievances subject to this complaint, the evidence discloses that following discussions at the regular monthly meeting, the union membership had voted that these matters be dropped and not be processed further to the arbitration step as provided for in the said collective agreement. Britnell, however, was not permitted to attend and make representations at the meeting concerning the disposition of his grievances as his membership in the union had been under suspension at this time. Nevertheless, he was allowed to address the general membership at this meeting concerning his suspension from the union, whereupon the membership had voted to reject his appeal in this regard.

4. The relevant facts giving rise to Britnell's suspension from the union are as follows: On August 30, 1973, A. Grant, a union member, had laid charges against Britnell for allegedly violating the union constitution. It would appear that this action, at least in part, was precipitated by a letter addressed to the Ontario Federation of Labour. This letter dated August 24, 1973, which was signed both by Britnell and Joseph Pap, a former fellow employee and union member, raised certain vigorous complaints in relation to a special union meeting which was held and taped on August 20. On September 21, Britnell was advised that a union trial board would conduct an inquiry regarding these charges on October 13. In the interim, Britnell himself had filed charges against G. Vanrijt, the president of the respondent union. The hearing concerning these charges was also scheduled for October 13. E. Brennan was assigned to act as chairman of the trial board to deal with Britnell's charges against Vanrijt and D. LaPorte was to chair the trial board that entertained the charges as laid by Grant against Britnell. Following the hearing into the charges as laid against Britnell, LaPorte by letter dated October 15, 1973, advised Britnell of the trial board's conclusion, viz., that he (Britnell) was found to have violated the constitution. It was the trial board's recommendation that Britnell be given a two year suspension from membership in the union and during which time he not be permitted to attend or vote at any subsequent union meetings. The recommendation of the trial board was subsequently approved by the union's Executive Committee. However, by letter dated October 17, 1973, Britnell was advised of his further right, pursuant to the provisions of the union's constitution, to appeal this suspension at the next regular membership meeting. This meeting was held on November 21, at which time Britnell was given the opportunity to present his case before the general membership at which time his appeal was voted down. According to Britnell, he had no quarrel with this decision. However, he stressed that he was not permitted to speak on any other matters at this time. The evidence discloses that it was during the course of this meeting that it was decided in Britnell's absence, that his grievances not be taken to arbitration. By letter dated November 22, 1973, Britnell was formally advised that his appeal to the membership concerning his suspension from the union had been

rejected at which time he was also advised of his further right to refer the matter to the "Canadian District Executive Board" pursuant to the provisions of the union's constitution. According to Britnell, he has exercised his further rights in this respect, but as of the date of the hearing of this complaint on April 11, 1974, he has received no decision from that body. In passing, we note that as a direct result of his suspension, Britnell was removed from office in his dual capacities as delegate and executive member to the Brockville and District Labour Council.

5. Britnell testified that on October 6, 1973, one week prior to the date scheduled for the trial board's inquiry, he had specifically requested LaPorte to provide him with particulars in relation to the charges as laid against him. He stated that these charges were very generalized and that he required more specific information in order to prepare for a proper defence at his trial. However, according to Britnell, LaPorte denied this request and informed him that he (Britnell) "will find out at the trial". Britnell contrasted LaPorte's behaviour in this regard with that of Brennan, who in his capacity as chairman of the trial board seized with the charges as laid by Britnell, specifically demanded from him the filing of particulars in this regard within five days prior to the date of the hearing. On October 11, two days prior to his trial, Britnell stated that he had requested the attendance of certain witnesses and that he had been frustrated in his attempts to procure at the hearing the minutes of the special membership meeting held on August 20. In this latter regard, Britnell stated that the union finally relented to his persistent pleas on November 1, and he was sent a copy of a transcript of this meeting upon his undertaking not to use that document against anyone associated with the respondent. Britnell stated that in the circumstances, he had no pangs of conscience in breaching this undertaking, and that further, he had discovered serious discrepancies in the transcript. He stated that his subsequent written requests to make copies of this transcript for submission to a lawyer for advice, be put to a vote of the Executive Board, and that the names of the opposers to this request, be sent to the International representative, were never properly answered. Britnell further drew our attention to his letter dated January 1, 1974, addressed to the editor of the "I.U.E. News", wherein he questioned the propriety of "the election by acclamation of the top four positions of District 5." He tendered in evidence the letter dated January 4, 1974, addressed to him by Mr. Hutchens, the president of the Canadian District. It is not necessary, for purposes of these proceedings, that we make any further comment upon the inflammatory statements as expressed by Mr. Hutchens in response to Britnell's actions in this respect.

6. In argument, Joseph Pap's submissions on behalf of the complainant are essentially two-fold. Firstly, he argues that despite Britnell's suspension from union membership, the actions of the respondent trade union in denying Britnell the opportunity to make representations

concerning the disposition of his grievances at the regular monthly membership meeting, were arbitrary and that although the respondent trade union permitted Britnell to make representations concerning his union suspension at this time, it nevertheless did not act in good faith as regards his rights of representation. Pap also suggested that the respondent trade union had acted in a discriminatory manner, in that as Britnell's co-signer to the letter of complaint addressed to the Ontario Federation of Labour, he was not similarly charged. With this latter position, we must disagree. There is no direct evidence before us as to whether Pap's membership in the respondent continued after his discharge from the company which became effective prior to the time of the said letter dated August 24, 1973. Even assuming however that his membership had continued throughout this period, we are nevertheless of the opinion that the question concerning the filing of charges is surely an internal union matter and the events surrounding the union's trial board procedures should, in these particular circumstances, not be subject to review by the Ontario Labour Relations Board purporting to act under the provisions of Section 60 of The Labour Relations Act.

7. However, Pap's first submission gives us particular concern. In this regard, he cited the recent Joseph Pap v International Union of Electrical, Radio and Machine Workers, Local 523 and RCA Limited, Prescott, Ontario Case (1974) OLRB M.R. P. 60, where he as complainant, initiated Section 60 proceedings against the respondent trade union for failing to process his grievance through the arbitration process. The Board in that case, concluded in effect, that the respondent trade union had contravened its statutory duty of fair representation to Pap in denying him access to the union meeting. It was during the course of this meeting that the membership had decided not to process his grievance, which was then at the fourth step of the grievance procedure, to the arbitration stage as provided in the collective agreement. Pap specifically referred us to Paragraph 16 of the Board's decision in that matter which at page 62, it is stated:

"It might be argued that the conduct of the union was merely an internal matter and, as such, was not prohibited conduct in the "representation" of employees, in the sense that representation concerns relationship between the union and the employer and that section 60 is intended to deal only with matters external to the union. Even if that be so the union meeting was concerned about the right of the employee to grieve and to obtain redress from the employer, and, as such, was an intervening union procedure which is part of the total grievance arbitration process which directly concerns the relationship between the union or the

employee and the company, and, as such, falls within the scope of the word "representation" in section 60."

8. It cannot be denied that the essential facts as described in the above-quoted case bear some marked similarities to those portrayed before us in these proceedings. One distinguishing factor, however, is that Pap was apparently a member in good standing in the respondent union at the time his grievance was disposed of at the regular union meeting. This was not the situation with Britnell, whose membership had been suspended by the respondent trade union acting pursuant to the machinery as set up in its constitution. This action effectively barred Britnell from participating in that portion of the union meeting which dealt with his grievances although, and pursuant to the terms of the constitution, he was nevertheless permitted at some stage of those proceedings to personally appeal (to the general membership) the decision of the trial board suspending him. The crux of the above quoted case, in our opinion is found in the preceding paragraph 15 where the Board found that "Pap should have been allowed the same access to the union (meeting) as were other members of the union."

9. The status of a suspended member of a trade union in Section 60 proceedings has been previously dealt with by the Board in the Witold Korsak v International Union of Operating Engineers, Local 793, and John Redshaw, Union Representation Case (1973) OLRB M.R. 355. In that case, the Board, in dismissing the complaint without a formal hearing, essentially relied upon the fact that there was no suggestion "that the complainant has been treated differently from any other member who may have lost his good standing and been suspended". This very situation is present before us in the instant case. It is not for this Board when inquiring into the statutory duty of fair representation, to satisfy itself that the union has conducted its internal affairs in a manner consistent with the rules of natural justice. In the instant case, the sole question before us is to determine whether the respondent trade union acted in a manner that is arbitrary, discriminatory or in bad faith in relation to the grievances of Britnell subject to this application. Our jurisdiction in this regard does not extend to determining whether Britnell's suspension from the respondent trade union was justified. We are not asked in these proceedings to sit on appeal from the decision of the union's trial board or indeed, for that matter - from the decision of the general membership itself as provided for in the respondent's constitution.

10. Having carefully reviewed the totality of the evidence as adduced, we must therefore conclude, in the particular circumstances of this case, that the complainant has not established that the respondent trade union has abdicated its statutory duty of fair representation as contemplated in the provisions of Section 60 of the Act. In the result, the complaint is accordingly dismissed.

5543-74-U: HICKESON-LANGS SUPPLY COMPANY (Applicant) v. Warehousemen and Miscellaneous Drivers Local Union 419, Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Respondent).

BEFORE: D.E. Franks, Vice-Chairman, and Board Members H.J.F. Ade and O. Hodges.

APPEARANCES AT THE HEARING: D.L. Brisbin and K. Roller for the applicant; Robin B. Cumine and Jack Robinson for the respondent.

DECISION OF THE BOARD: May 8, 1974.

1. This is an application for a declaration that the respondent trade union called or authorized an unlawful strike.

2. The respondent trade union has been conducting a strike against certain companies in the Toronto and London areas. The applicant in the present case is a wholly owned subsidiary of one of the companies being struck in these other areas. On Monday, April 22, 1974, in the early hours of the morning a picket line consisting of some 13 to 15 persons commenced picketing the premises of the applicant in Hamilton. That picketing has continued to the present time.

3. The signs carried by the pickets for the first two days read: "Hickeson-Langs Local 419 on Strike". However, subsequently these signs were changed to read: "Local 419 on Strike".

4. The employees of the applicant working at Hamilton are bound by a collective agreement between the applicant and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) Local 525, which agreement is currently in effect. The applicant is not bound by any collective agreement with the respondent at its Hamilton premises. There is further evidence that the picket line has resulted in a cessation of work by the employees at Hamilton.

5. The applicant's allegation that the respondent called or authorized a strike of its employees is based on an argument that the picket line called the employees of the applicant out on an unlawful strike. The employees who ceased working are not members of the respondent and therefore the respondent cannot be said to have called a strike of its members at the present location, nor can the respondent be said to have authorized a strike of its members at the present location. There is no evidence to support the proposition that the respondent trade union called on the employees to engage in a strike. The evidence does not indicate that the picket signs exhorted the employees of the respondent to stop working, nor was there any evidence of any meeting at which a request to strike was made to the employees who ceased work.

6. While it may be that the acts of the respondent constitute a violation of some other provision of The Labour Relations Act, we are of the view that the evidence presented in this case does not lead to the conclusion that the respondent trade union called or authorized a strike of the applicant's employees at Hamilton. This application for a declaration is therefore dismissed.

5544-74-U: HICKESON-LANGS SUPPLY COMPANY (Applicant) v. T. Baker and other Employees included on Schedule "A" hereto affixed (Respondents).

BEFORE: D.E. Franks, Vice-Chairman, and Board Members H.J.F. Ade and O. Hodges.

APPEARANCES AT THE HEARING: D.L. Brisbin and K. Roller for the applicant; L.A. MacLean and Frank Moroz for the respondents.

DECISION OF D.E. FRANKS, VICE-CHAIRMAN, AND BOARD MEMBER H.J.F. ADE WITH O. HODGES CONCURRING IN PART: May 8, 1974.

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2. The employees affected by this application are employed by the applicant at its operation in Hamilton. The bargaining agent for these employees is the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) Local 525, and these employees are bound by a collective agreement between Local 525 and the applicant which is dated August 18, 1973. That agreement continues in effect until June 14, 1975.

3. The evidence in the present case is that on the morning of April 22, 1974, a picket line was set up in front of the applicant's premises at Hamilton. The pickets carried signs reading: "Hickeson-Langs Local 419 on Strike". It is apparent that the picket line relates to a lawful strike in which the Warehousemen and Miscellaneous Drivers Local Union 419, Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America is striking certain companies in Toronto and London which have a corporate relationship to the applicant. The picket line consisted of some 13 to 15 persons and it is continuing to the present. The evidence is that since the commencement of the picketing, attendance at the applicant's plant has been only partial and sporadic. The employees of the applicant have only on occasion crossed the picket line to work in the applicant's warehouse, but no trucks have left the applicant's operation at Hamilton since April 22, 1974.

4. The applicant has met with groups of employees in attempts to persuade them to return to work, but this has only resulted in work at the warehouse and not the return to normal of the applicant's delivery operation.

5. On the basis of the above evidence it is clear that the employees named as respondents have engaged in cessation of work in accordance with a common understanding, and that that cessation of work has taken place during the operation of the collective agreement.

6. Counsel for the respondents served with the application argues that because of the circumstances the Board ought not to issue a declaration that such strike is unlawful. Counsel attempted to show that the reason that the employees absented themselves from work was not for economic reasons, but of the fear of injury because of the picket line at the entrance to the applicant's premises. The Board has in certain circumstances held that a refusal to work under conditions which are apprehended by employees to be unsafe, does not constitute a strike and counsel for the respondent urges the Board to make a similar finding in the present case. With the greatest of respect we cannot agree that fear of a picket line in the circumstances of the present case should be grounds for denying a declaration that a strike is unlawful. The employees in refusing to return to work knew they were in violation of the provision of the collective agreement that requires that there be no strikes or lockouts during the term of that agreement.

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DECISION OF BOARD MEMBER O. HODGES: May 8, 1974.

1. I concur with my colleagues in the decision that within the meaning of section 1(1)(m) of The Labour Relations Act;

"1.-(1)(m) "strike" includes a cessation of work, a refusal to work or to continue to work by employees in combination or in concert or in accordance with a common understanding, or a slow-down or other concerted activity on the part of employees designed to restrict or limit output;"

there was "a cessation of work" during the term of a collective agreement and therefore an unlawful "strike" continued at the date of the hearing, within the meaning of the legislation.

2. The testimony of the Hamilton Branch Manager, Mr. Ken Roller, is that he has day to day knowledge of the industrial relations of the company at Hamilton where he has been employed in that capacity for three years. He has been employed all told some fourteen years by this company at Hamilton and at Toronto.

3. Cross-examined by counsel for Local 419, Mr. Roller admitted that the respondent at this time had started to use the Hamilton company to service the Toronto company accounts affected by the legal strike of Local 419 at Toronto. However, no deliveries were actually made. He also admitted that the Hamilton company had in fact serviced Toronto customers affected by an earlier strike of Local 419 at Toronto.

4. Cross-examined by counsel for UAW 525, whose members are employed at the Hamilton location, Mr. Roller admitted that there was a risk of physical injury in crossing a picket line and that he didn't want his employees to take unnecessary risks.

5. The applicant company would appear to have created its own problem by strike breaking in the past and by attempting to do the same thing again. Unfortunately there is no legislation to deal with such provocative activities. In my opinion, an employer who deliberately runs the risk of disrupting good relationships with employees working under the terms of an existing collective agreement, as is apparent from the evidence in this case, deserves no relief.

4989-73-U: Kenneth Hughes (Complainant) v. CANADIAN UNION OF PUBLIC EMPLOYEES AND ITS LOCAL 922 AND THE BOARD OF EDUCATION FOR THE BOROUGH OF NORTH YORK (Respondents).

BEFORE: D.E. Franks, Vice-Chairman, and Board Members O. Hodges and F.W. Murray.

APPEARANCES AT THE HEARING: Kenneth Hughes for the complainant; J.H. Bird, Robert A. Smith and G. Hogben for the respondent union; A.J. Clark, Q.C. and T.M. Park for the respondent company.

DECISION OF THE BOARD: May 14, 1974.

1. This is a complaint under section 79 of the Act in which the complainant-grievor alleges a violation of section 60 of The Labour Relations Act. The alleged violation of the Act arises out of the processing of the grievance. The grievance in turn arises out of a layoff which the complainant claims was not in accordance with the collective agreement between the two respondents in this matter. The grievance was processed to its various stages as set out in the collective agreement under which it was brought. However, this process stopped at the point where the respondent trade union has appointed its nominee to an arbitration board and the respondent employer has refused to appoint its nominee on the grounds apparently that it claims that the matter in dispute is not arbitrable.

2. Without going into detail concerning the grievance itself it is sufficient for our present purposes to note that the dispute arising out of the collective agreement is with respect to the application of the seniority provisions of that collective agreement to the layoff of the complainant, and basically whether the seniority provision is to be applied to one classification or over the whole of the bargaining unit. In this regard the Board heard the evidence of the complainant concerning the notice of the layoff, which is not very material. The evidence of the complainant which is material and which is in dispute before the Board concerns the attitude of the trade union in the processing of the grievance and the attitude of the complainant with respect to the processing of his grievance. The evidence of the complainant is that the attitude of the respondent trade union with respect to the handling of his grievance changed in the course of its being processed through the various stages of the grievance procedure. Thus, before the grievance arose the union assured him that it would press his complaint. However, once the grievance was made and meetings were held between the employer and the union, at the point when the respondent employer threatened to review the seniority provisions of the collective agreement, the union reversed its position and refused to forcefully continue to press the complainant's grievance under the collective agreement.

3. The evidence presented by the trade union contradicts the evidence of the complainant in this matter and suggests that although they were concerned about the policy implications of pressing the grievance they continued to act in good faith on behalf of the complainant. The union's evidence was that prior to the complainant's grievance, two other grievances concerning the seniority provisions of the collective agreement had been settled at the third stage of the grievance procedure in what the union regarded as the union's favour. Their concern was that the complainant's grievance went contrary to previous grievances, and if pressed to arbitration would result in a reversal of an interpretation that they felt they had gained on the two settled grievances. Notwithstanding this threat of reversal, the respondent trade union did formally process the grievance to arbitration. However, because of financial difficulties and because of difficulties with the merits of the case, the respondent trade union took the position that it could not finance the arbitration, but it would process the arbitration and act for the complainant on the condition that he would reimburse the union for its costs in the arbitration. It is of note that the complainant was informed of this but has not accepted this offer of the respondent trade union.

4. The union in its evidence accused the complainant of acting in bad faith with respect to the grievance itself. The union presented evidence that the complainant had on a number of occasions said to fellow employees and to officers of the respondent trade union that if he won the grievance over the layoff, he would only return to work

for a few days and then quit: All that was involved was a matter of principle. In the face of these submissions the union was quite concerned that it might in fact be bringing a frivolous grievance. The complainant on the other hand denies having made such submissions.

5. The relief sought by the complainant is to have the grievance brought before an impartial of arbitration. It is clearly not the issue before this Board as to whether the complainant's grievance has any merit. Our only concern under section 60 is how the trade union dealt with the complainant and whether, in fact, the conduct of the trade union in representing the complainant was arbitrary, discriminatory or in bad faith. In making such a determination the Board must recognize the legitimate interests of the trade union in representing the totality of the employees in a bargaining unit, and this must weigh against the interests of a complainant that he be represented in a manner that is neither arbitrary, discriminatory or in bad faith.

6. In the circumstances of the present case we fail to see that the union has been derelict in its duty under section 60 of the Act in evaluating the complainant's grievance. The interpretation placed on the seniority provisions of the collective agreement is a legitimate factor for trade union concern. That in itself might be sufficient for the union to refuse to process the complainant's grievance through to arbitration. However, the union adopted the posture of allowing the complainant recourse to arbitration if he would pay the costs for such arbitration. Given the statements by the complainant that he would only return to work for a few days (we accept the evidence of the trade union over the evidence of the complainant in this regard), the union also has a legitimate concern in not dissipating the funds of all of the members of the bargaining unit with respect to a grievance that the union has decided would be frivolous.

7. In view of the foregoing this complaint is dismissed. Since the complaint is dismissed it will not be necessary to deal with certain matters raised by the respondent employer, The Board of Education for the Borough of North York, with respect to the relief obtainable by the complainant in the present matter.

5558-74-R: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW) (Applicant) v. VULCAN EQUIPMENT COMPANY LIMITED (Respondent) v. Sheet Metal Workers' International Assoc., Local #540 (Intervener) v. Group of Employees (Objectors).

BEFORE: D. H. Kates, Vice-Chairman, and Board Members H. J. F. Ade and A. Main.

APPEARANCES AT THE HEARING: H. F. Caley and H. Carl Anderson for the applicant; S. W. Long, Q.C., for the respondent; A. L. Moore for the intervener; B. Self for the objectors.

DECISION OF THE BOARD: May 16, 1974.

1. This is an application for certification for an all employee unit at the respondent's plant in Fergus, Ontario.
2. It appears that the respondents operations are presently operating out of three locations in Metropolitan Toronto. In an effort to consolidate these operations the Metropolitan Toronto plants are to be phased out and transferred to Fergus, Ontario. As of the date of the instant application some twenty employees were employed at the Fergus plant in production and maintenance work. It is anticipated that a night shift is to be introduced at the new plant in the middle of May wherein an additional fifteen employees are to be added to the work force. By July 15, 1974 the automobile equipment section of the respondents operations at 20 Research Road in Toronto is to be phased out and transferred to the Fergus plant. This will necessitate an increase in the staff at Fergus by approximately fifty to sixty employees. By December 31, 1974 when the rubber division of the respondents operations is phased out at 95 Research Road it is expected that a full complement of one hundred employees will be employed and form a part of the proposed bargaining unit.
3. The only problem likely to affect the planned build-up of employees as indicated by Mr. Bernard Alm, President of the respondent company, is the availability of skilled employees in the Fergus area. Nevertheless, it was also indicated to the Board that the real problem with respect to acquiring the necessary employees susceptible to training would be limited to some 15 to 20 employees in the rubber division. And in this regard, the evidence suggested that many of the incumbent employees at the Toronto location may be disposed to accept the respondent's invitation to follow the transfer to the Fergus plant.
4. We are satisfied that this is an appropriate circumstances for the application of the build-up principle. Should in the course of events the planned build-up not progress, then the Board will consider the membership position of the applicant as of the date of the making of the application for certification for purposes of the disposition of the application. (see; International Nickel Company Case OLRB M.R. March 1973 172).
5. The Board accordingly directs the respondent to report to the Board periodically on the number of persons in its employ and their job classifications. The first report is to be made on June 1, 1974 and the fifteenth and the first of the month thereafter until the Board should otherwise direct.

5113-73-U: Service Employees Union, Local 204 (Complainant) v. SWISS CANADIAN MANAGEMENT COMPANY LIMITED, AND YORK CONDOMINIUM CORPORATION NO. 42 (Respondents).

BEFORE: Frank V. Boscariol, Vice-Chairman, and Board Members A. Main and F. W. Murray.

APPEARANCES AT THE HEARING: P. Cavalluzzo, R. Nannini and B. Pritchard for the applicant; G. R. Pacey for the respondent.

DECISION OF THE BOARD: May 17, 1974.

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2. This is a complaint filed on January 28, 1974, pursuant to the provisions of Section 79 of The Labour Relations Act, wherein the complainant alleges that the aggrieved persons, William Pritchard, Salome Thomas and Rudi Deskau, have been dealt with contrary to the provisions of Section 58(a) of the said Act.

3. The facts giving rise to these proceedings are as follows. The respondent York Condominium Corporation No. 42 (hereinafter referred to as York) came into existence on August 18, 1971, by virtue of the registration of a declaration in the office of Land Titles at Toronto, pursuant to the provisions of the Condominium Act. On August 23, 1971, York entered into a management contract with Del Zotto Property Management (hereinafter referred to as Del Zotto) whereby Del Zotto, inter alia, assumed responsibility for the cleaning of the York complex consisting of three condominium buildings municipality situate at 320, 330 and 340 Dixon Road, respectively, in Metropolitan Toronto. This complex composed of some 900 suites, is the largest of its kind in Canada. In contrast to tenants in an apartment building, ownership in these suites rests outright in the individual residents (hereinafter referred to as the unit owners) who also retain proportionate ownership in the Common Elements consisting of the halls, grounds, elevators, stairways, recreation areas, saunas etc. The affairs of York are conducted through a board of directors duly elected by the unit owners and it was this body that on November 9, 1973, purported to unilaterally terminate York's management contract with Del Zotto. It would appear that the legality of these actions has been referred to the courts and we need not, for purposes of these proceedings, concern ourselves with that issue. Suffice it to say, that we are satisfied, on the basis of the evidence as adduced in this regard, that this action was prompted by the general dissatisfaction of the board of directors with Del Zotto's performance up to this time. A particular area of concern in this respect, was the complaints emanating from the unit owners in relation to the calibre of cleaning services as provided by the Del Zotto's employees.

4. The evidence as adduced in this respect discloses that on June 16, 1972, the Board had previously certified the complainant trade union to represent a bargaining unit of cleaners employed by Del Zotto at the York complex (see The Del Zotto Property Management case (1972) OLRB M.R. 640). In November of 1972, Del Zotto entered into a collective agreement with the complainant for a bargaining unit of cleaners which encompassed the three aggrieved persons subject to this complaint. This agreement was to remain in effect until November 15, 1977. On October 1, 1973, the complainant was also certified to represent a tag-end bargaining unit composed of three maintenance employees of Del Zotto also employed at the York complex. (Board File No. 4358-73-R). However, no collective agreement had been negotiated in relation to these employees.

5. The evidence further discloses that York subsequently entered into a new management contract effective November 9, 1973, with the respondent Swiss Canadian Management Company Limited (hereinafter referred to as Swiss). As previously indicated, Del Zotto questioned the propriety of York's actions in this regard. Not only did Del Zotto refuse to recognize Swiss as its successor, it refused to remove itself from the premises and continued to occupy one of the suites in the complex until November 26. In the interim, York had, on November 19, officially served the aggrieved persons with notice to vacate. Upon their refusal to leave the premises, a meeting was hastily arranged at this time between the cleaning personnel (including the maintenance employees) with the representatives from Swiss and a senior executive with Swiss, agreed that Swiss would hire on these employees.

6. The matter was pursued further by the applicant and on December 3, it presented to Swiss a proposal which took the form of an Addendum to the collective agreement that the applicant had previously negotiated with Del Zotto. It is clear that this meeting was merely of an exploratory nature and that matters were left on the basis that Swiss would review the proposal prior to a further meeting to be scheduled some time in the new year. However, on January 15, 1974, a decision was reached at the board of directors meeting, to the effect that York contract out the cleaning functions to a professional cleaning contractor, viz. to Dustbane Enterprises Limited (hereinafter referred to as Dustbane). By this time a meeting had been arranged between Swiss and the complainant for January 17, and it was at that meeting that Swiss apprized the complainant of the situation. Aside from a few outbursts on both sides of the table, it is clear that no further "negotiations" occurred between the parties at this time.

7. The aggrieved persons were formally advised of their termination by Swiss the next morning (e.g. January 18) and which was to become effective Friday, February 1, 1974. However, by telegram received by Swiss on February 1, Pritchard indicated, on behalf of the aggrieved

persons, that they would nevertheless be reporting for work the following Monday. In this regard, he served Swiss with a group grievance (although it is clear on the evidence that there was no collective agreement in existence between the parties), which bore the signatures of the aggrieved persons, alleging that Swiss had discharged them unjustly. In the interim, on January 17, the complainant had filed an application for certification (Board File No. 5048-73-R) for a bargaining unit of employees encompassing the aggrieved persons. The decision of the Board in that matter was released on February 6, 1974 wherein the applicant was certified to represent, on agreement of the parties, an "all-employee" unit of employees engaged by Swiss at the York complex.

8. It is the submission of the complainant that the actions of York in contracting out the cleaning functions, the direct consequence of which was to induce Swiss to terminate the employment of the three aggrieved persons, was prompted, at least in part, by anti-union considerations. The respondents, on the other hand, maintain that the decision, made by the board of directors on behalf of the unit owners, was based essentially upon the need to upgrade the quality of cleaning services as provided at the complex, by means of entering into a comprehensive long-term cleaning arrangement with an independent cleaning contractor and that anti-union sentiment played no role in the resultant displacement of the aggrieved persons.

9. The testimony of John Jones, a former unit owner and presently the Manager of Custodial Services at Humber College, is to the effect that during his six-month term as York's Chairman of the Maintenance Committee, he found that the standards of cleanliness at 320 and 340 Dixon Road were very poor. He noted that a petition complaining about this state of affairs was circulated amongst the unit owners at 320 Dixon Road and that two hundred signatures were obtained in this regard. As regards his own suite at 320 Dixon Road, he complained that vacuuming on the hallway floor was a particular problem and that on one occasion nothing had been done in this regard for a period of two weeks. On cross-examination, he conceded however that part of the problem was probably due to insufficient staffing and that the aggrieved persons Thomas and Deskau should have had additional cleaning help which was not forthcoming from the superintendent and his wife who were expected to work as a team. As regards Pritchard's employment at 330 Dixon Road, both Joseph Desilets, his immediate supervisor and Howard Charendoff, the Assistant Manager, testified to the effect that Pritchard was not a co-operative employee. However, for purposes of these proceedings, it is not necessary for us to determine the work performance of the aggrieved persons, although there is no question that Deskau's work record throughout this period was excellent. Having carefully reviewed the totality of the evidence as adduced in this regard, we are satisfied that many of the cleaning problems faced by York at the relevant times were due to the extremely poor immediate supervision of the cleaning staff as exhibited initially by Del Zotto, and then by Swiss. Be that

as it may, we find that in the particular circumstances of this case, we must nevertheless look to the respondents for a credible explanation for their actions which culminated in the termination of the aggrieved persons employment.

10. The evidence of both Frank Pitre and Peter Boland, the maintenance employees at 300 Dixon Road and referred to in Paragraph #4 herein, is to the effect that they lost interest in the union once the employees of Dustbane came upon the scene. When specifically asked if they could cite any instances of anti-union activity on the part of the respondents, they replied in the negative. The evidence as adduced in this regard discloses that some cleaning services were shared by New York Window Cleaners (hereinafter referred to as New York) at 330 Dixon Road and whose employees were also exclusively assigned to cleaning operations at 340 Dixon Road. It is noteworthy that this cleaning contract was also terminated subsequent to York's acceptance of the Dustbane contract. Further, we find nothing sinister as suggested by counsel for the complainant, in York terminating its contract with New York at the end of February, (the aggrieved persons's terminations were effective the first day of February) having regard to the one month's notice provision as contained in that contract. On cross-examination, Mr. Yaeger's testimony seemed to imply that the new cleaning contract with Dustbane was less costly to York than the previous arrangements involving the three aggrieved persons and New York. However, on re-examination, he expressed the opinion that the Dustbane contract was the more expensive alternative.

11. Peter Dorpat, Del Zotto's former Senior Property Manager at the York complex, testified that Nick Bon Giovanni, one of York's board of directors, had complained to him about the poor quality work of the cleaners and that he (Bon Giovanni) had stressed the fact that they were unionized. Bon Giovanni in his evidence emphatically denied that he had any anti-union animus and that this discussion only related to the work performance of these employees. Bon Giovanni further testified that he himself had been quite active in the union movement and has held various official positions in this regard during the course of his employment. There are other discrepancies in the testimony of Dorpat when compared to that of Bon Giovanni. Having had the opportunity to personally assess the demeanour of these witnesses and the manner in which they testified before us and taking into account the reasonableness of such testimony, we prefer the evidence of Bon Giovanni wherever it conflicts with that of Dorpat.

12. It cannot be denied that York was displeased with some aspects of the collective agreement as negotiated between Del Zotto and the complainant union, which inter alia, provided for a term of operation which exceeded the duration clause of Del Zotto's management contract with York. The fact however remains that York took no steps to dissuade

Swiss from hiring on the aggrieved persons who were covered in that collective agreement, although Swiss in turn, took the appropriate steps to ensure that it would not be bound by this agreement. However, having carefully reviewed the complex circumstances surrounding this matter, we are not satisfied that such displeasure nor any anti-union animus for that matter, on the part of York played any role in its decision of January 15, 1974. In this regard, we find that the motives underlying this decision of the York board of directors were based upon the frustrations as exhibited to them by the unit owners in relation to the quality of cleaning services being provided to the Common Elements associated with their "homes".

13. In the result therefore, the complainant has failed to satisfy us on the balance of probabilities that the termination of the employment of these aggrieved persons, in these circumstances, were in violation of the Labour Relations Act.

14. The complaint is accordingly dismissed.

4205-73-R: Association of Commercial and Technical Employees, Local 1704, C.L.C. (Applicant) v. COMTECH GROUP LIMITED (Respondent) v. Group of Employees (Objectors).

BEFORE: Frank V. Boscarior, Vice-Chairman, and Board Members E. Boyer and F. W. Murray.

APPEARANCES AT THE HEARING: H. F. Caley, E. Arnold and R. Ortlieb for the applicant; R. C. Filion, D. McPhail and B. Gall for the respondent; no one appearing for the objectors.

DECISION OF VICE-CHAIRMAN FRANK V. BOSCARIOR AND BOARD MEMBER E. BOYER: May 17, 1974.

1. Pursuant to the decision of the Board dated August 31, 1973, the Examiner convened various protracted meetings of the parties which culminated in his extensive report in this matter dated February 26, 1974. The Board held a further hearing in this regard on April 9, 1974, at which time the parties were afforded an opportunity to present argument concerning the conclusions which the Board should reach in view of the said Examiner's Report.

2. The bargaining unit as initially proposed by the applicant is for "all office, clerical and technical employees of the respondent in Metropolitan Toronto, save and except supervisors, those above such rank and outside sales staff". The primary position of the respondent in this regard is that all of the employees in the bargaining unit proposed by the applicant have access to confidential information relating to labour

relations and as such, they therefore do not qualify as employees within the meaning of section 1(3)(b) of The Labour Relations Act.

3. Without prejudice to its primary position, the respondent submits that should the Board determine that the employees affected by this application are appropriate for collective bargaining, then it proposes a bargaining unit consisting of "all office, clerical, technical and sales staff in Metropolitan Toronto, save and except supervisors, persons above the rank of supervisor, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period". In this regard, the respondent further submits that in the event the Board is disposed to establish a separate bargaining unit for part-time employees and students, it would agree to the description of such a second unit as proposed by the applicant, viz., "all office, clerical and technical employees of the respondent in Metropolitan Toronto regularly employed for not more than 24 hours per week and students employed during the school vacation period".

4. As regards the respondent's primary position, the evidence is to the effect that the respondent by the use of computers provides payroll and payroll-related services to approximately 300 client companies in the general vicinity of Toronto entailing payroll services for some 480 separate payrolls. These payroll services may relate to the plant, office or executive payroll of a particular client of the respondent or any combination thereof. As of the date of the filing of this application, on August 3, 1973, the respondent employed various persons under the classifications of Salesmen, Systems Representatives, (otherwise referred to as outside service personnel) Customer Service Representatives, Production Control Personnel, Key Punch Operators, Computer Operators, Packager, Driver and general office staff.

5. The functions of these employees in relation to the respondent's total operations, put in its briefest sense, may be summarized as follows. The Salesmen are essentially concerned with the initiation and the solicitation of new accounts. The primary responsibility of the Systems Representatives is to assist in the "installation" of such new accounts and their subsequent servicing. If attendance at the client's premises is not required, this latter function may be performed by the "inside" Customer Service Representatives whose dealings with the client will then be conducted over the telephone. The function of the production control personnel is to receive from the client certain "Input Documents". These documents consist of certain forms provided by the respondent and upon which the client has filled in the required information, which is screened by the production control employee. Once this information is found to be in order, the "Input Documents" are referred to the Key Punch Operators who then transcribe the information appearing on these documents to key punch cards. These cards are then passed on to the Computer Operators, who in turn, feed them into the computer

together with a tape containing the client's Master File. (In this regard, the respondent operates two companies, one being situated at its offices in Willowdale, while the other, which is utilized by the respondent only at night, is located in another building approximately one mile away). Upon "digesting" this information, the computer ultimately produces the finished product referred to as "Output Documents". These latter documents are scrutinized by the Packager who ensures that they are properly placed in envelopes. The documents are then delivered to the client by the Driver, who at the same time picks up the new series of "Input Documents", which when delivered to the respondent, commences another cycle of activities culminating in the next payroll. The responsibilities of the general office staff consist of receptionist, typing and billing duties and other related general office routines.

6. The Board has had an opportunity to carefully examine the "Input Documents" as filed by the respondent at the Examiner's meeting (Exhibit 2A through Exhibit 2F), which together with the Master File, contain all the information necessary for the processing of the client's payroll. The evidence in this regard discloses that while the Master File contains the constant and unchanging information relating to a particular employee of the client, (such as the employee's name, departmental number, etc.), the "Input Documents" reflect the variations and changes incidental to the client's operations (such as matters relating to new employees, their change in status, layoffs, etc.,). In addition, the evidence discloses that the respondent can provide up to 28 "optional accumulators" whereby the client can request certain specific data based upon certain specific information it supplies to the respondent. This information may relate to such sundry items as plant closures, advance notice of employee terminations, information relating to an employee's performance (including his absenteeism, lateness, overtime, stock shortages, etc.), profit sharing information, director's fees, shareholder's advance sales information, incentive bonuses and stocks.

7. Counsel for the respondent, during the course of these proceedings, has gone to some lengths in an effort to establish that the information to which the employees have access during the course of their employment, must be characterized as confidential. In this regard, he asked the Board to note the many security measures adopted by the respondent. These include such matters as the utilization of locked containers for its waste material and the installation of cypher locks on the respondent's premises, which together with other procedures are designed to limit and control the activities of the employees within the respondent's "operations" area.

8. Counsel for the respondent also drew our attention to certain documents in the respondent's possession technically known as "dumps"

(Exhibit 5A through Exhibit 5C). These documents represent, in effect, an exact print-out of the information recorded on the client's Master File tape. The evidence in this regard discloses that such "dumps" could be run off from the computer in a relatively short period of time, and that the activity was not necessarily recorded by the respondent. Counsel for the respondent submitted that in these circumstances the respondent had virtually no control over the number of "dumps" that could be reproduced. He suggested that this was also the case with the "Output Documents". When he emphasized that it was in this area of the respondent's operations that the employees concerned were relatively unsupervised, counsel for the applicant strenuously objected to the implication that these employees, because of their union affiliation, would surreptitiously pass on such information for purposes of assisting union activities being conducted in relation to any of the employees of the respondent's clients. Counsel for the respondent, in reply, stated that he was not suggested that the employees of the respondent would in fact reach in such a manner, but rather that they would be placed in a conflict of interest situation because of their duty to their employer not to disclose such "confidential" information. However, he did stress that a substantial proportion of the respondent's clients are in the financial, commercial and institutional fields of endeavour and that these were the very establishments that the applicant has publicly indicated its desire to organize. He further expressed concern regarding the fact that at least thirty per cent of these clients had employees that were unionized. He asked us to consider the fact that certain executive payrolls are assigned to the respondent for the very reason that the client does not wish this information being exposed to the remainder of its own employees. He asked the Board to speculate upon the situation where one of the employees of the respondent became an officer of the applicant and subsequently becomes aware that the applicant is in the process of organizing the employees of one of the respondent's clients. He likened the situation to the conflict of interest experienced by the secretary of a personnel manager if she were to be included in an office bargaining unit.

9. We would question the relevancy of many of the factors raised by counsel for the respondent in his argument before us. In our opinion, much of the factors we are asked to consider are based upon speculation and conjecture concerning events which may or may not occur in the future. The Board's policy in this respect has been generally to consider matters as of the date of the filing of the application. As was stated by the Board in the Sinclair Cut Stone and Construction Company Case Vol. 1, 1944-1959 CLLC p1368 at page 1369 "...the question whether certification will, in a particular case, be of benefit to the employees or will pose difficult problems for the parties concerned is not one for consideration by the Board. An applicant which meets the necessary requirements is entitled to certification for what it is

worth. It is not the function of the Board to endeavour to estimate the probable future value of certification".

10. Having carefully reviewed the totality of the evidence as adduced in this regard, we have no hesitation in concluding that much of the information to which the employees subject to this application have access, is of a confidential nature. In this regard, we refer specifically to the decision of the Supreme Court of Canada in Labour Relations Board for B.C., the Attorney-General for B.C. and Retail, Wholesale and Department Store Union, Local No. 580 (appellants) v. Canada Safeway Limited (respondent) 53 CLC Article 15,058 p. 171. In that case, the court was asked to determine whether certain computer, telephone, comptometer duplicating and power machine operators were specifically exempted from the definition of "Employee" by reason of their being "employed in a confidential capacity", pursuant to the relevant provisions of the British Columbia Industrial Conciliation and Arbitration Act. The conclusion as reached by Kerwin J. at page 173 of that decision is to the effect that:

"The fact that an employee had access to confidential information does not mean that he was "employed in a confidential capacity"."

Rand J., in his concurring opinion, commencing at page 173, stated as follows:

"The data include all accounting particulars of the business done in each store, detailed to individual departments; the total operations of the zone in similar form and detail; and the usual statistical calculations in terms of unit volume, labour and return. In this matter appear, of course, prices, wages, houses, profits and other items that enter into the final result, elaborated in relation to warehouses, shops, service and all other activities of the business.

The Powers machines are used, among other things, to make out cheques to all employees except executives paid from the Vancouver office; for the preparation of the invoices of goods to the retail stores in the zone, of records showing cost prices, sale prices and profit margins throughout the zone, and of daily and quarterly reports of volume sales of individual commodities.

The duplicating machine operators reproduce the statistical returns already mentioned. They also distribute incoming and handle outgoing mail.

All of these employees are claimed to be within the exemption, but from the facts stated it is clear that the work done by them is simply the mechanical production of statements of the business, in more or less detail, and reduced to significant units.

This is undoubtedly information which the company does not broadcast from the housetops; but the operators do nothing to or about it except to transcribe it on paper for the use of other. Their work is basically instrumental although there is some consolidation and even, it may be, of calculation by them for the results tabulated. The disability urged arises through their exposure to that information, and the taint is said to disqualify even the clerks who handle the mail.

(Degree of "Confidential Capacity")

This condition is present more or less in every business and an employee is under a legal duty as a term of his employment to treat all such matters as the exclusive concern of the proprietor. But the question under the statute is not to be determined by the test whether the employee has incidental access to this information; it is rather whether between the particular employee and the employer there exists a relation of a character that stands out from the generality of relations, and bears a special quality of confidence. In ordinary parlance, how can we say that a person skilled to operate a comptometer and employed primarily because of that skill, who is presumably so fully occupied with the particular work of transcribing or consolidating, that the figures in general would mean little to him, is by that exposure converted into an employee with a "confidential" relation? Between the management and the confidential employee there is an element of personal trust which permits some degree of "thinking aloud" on special matters: it may be on matters in relation to employees, competitors or the public or on proposed action of

any sort or description; but that information is of a nature out of the ordinary and is kept within a strictly limited group. In many instances it is of the essence of the confidence that the information be not disclosed to any member of any group or body of the generality of employees".

11. Two factors should be noted as regards the aforementioned decision of the Supreme Court of Canada. Firstly, the court in that case was dealing with a situation in which the confidentiality related to incidental access to information which could directly affect the employer's bargaining relationship with its own employees. Unlike the situation described in the instant case, the court was not dealing with the employee's access to confidential information directly relevant to the labour relations of a third party, namely the client or customer that is being serviced by the employer. Secondly, it should be noted that the relevant Ontario legislation is more further restrictive than the above quoted British Columbia legislation. That is to say, that not only does Section 1(3)(b) of the Ontario Labour Relations Act specifically exclude from the definition of "employee", a person who "is employed in a confidential capacity" but it adds the additional qualification, namely, "in matters relating to labour relations".

12. Turning now to the relevant Board jurisprudence in this area, the Board's policy, in relation to the general payroll knowledge possessed by certain employees in the proposed bargaining unit (including knowledge of the remuneration paid to company executives), has never been to regard such knowledge as a matter which is confidential relating to labour relations. (In this regard see the decision of the Board in The Holophone Company, Limited case (December) OLRB M.R. 1972 999; No-Sag Spring Company Limited case (December) OLRB M.R. 1966 667; Nashua Canada Limited (December) OLRB M.R. 1970 921). In a more sophisticated fashion, and with the exceptions as outlined in Paragraph #6 herein, we find that this is essentially the knowledge to which the respondent's employees have access to in relation to its clients.

13. In this regard, counsel for the respondent submits that the capacity of the employee is unspecified in the phrase "employed in a confidential capacity in matters relating to labour relations", and that the legislation does not specifically require that the confidential information in this respect be restricted to matters relating only to the labour relations of the employer. It would appear that this is the first occasion in which the Board has been specifically asked to rule upon this issue. We cannot, however, accept the proposition as advocated to us by counsel for the respondent. In our opinion, the conflict of interest as envisioned in the statutory exclusion, relates to a person being "employed" in such a capacity

and to which, in the normal course of his employment, such a person has access to labour relations matters which if disclosed to the union bargaining on his behalf, would have an adverse effect upon the employer.

14. In reaching this conclusion, we find solace in the recent decision of the Board dated April 8, 1974, in the Metropolitan Separate School Board case (Board File No. 4442-73-U) where in paragraph 9 the Board stated as follows:

"In order that this decision be not misunderstood the Board stresses that the words "employed" as used in S1(3)(b) must be rendered the meaning the Legislature intended. Had Miss Thomas as part of her duties and responsibilities, attended meetings where union management negotiations were discussed this Board would have no misgiving in excluding her from the bargaining unit. That is to say, such exposure would be integral to her job function. There must be "a regular material involvement" in matters relating to labour relations to justify exclusion from the bargaining unit (see; Falconbridge Nickel Mines Ltd. OLRB M.R. September 1966 379 at p388-9). For example, persons employed as accountants who prepare financial statements and attend management meetings, (see Burns and Company Ltd. OLRB M.R. April 1965 1); or personnel stenographers and plant nurses who as a necessary incident to the performance of secretarial or nursing duties have access to personnel files (see; Canadian Motor Lamp Company Case OLRB M.R. May 1969 189; Canadian Filters Limited Case OLRB M.R. April 1967 36); and "technical advisors" such as time study technicians who require information derived from confidential files to perform their duties, (see; Boyles Industries Case OLRB M.R. March 1971 111; Canadian Acme Screw and Gear Limited Case OLRB M.R. February 1967 873) have been held by the Board to be persons who are employed in a confidential capacity relating to labour relations!"

15. In the result, we conclude that the purpose of the legislation is to, in effect, "insulate" an employee, who in the normal course of his employment and as part of his regular duties, is directly involved in matters relating to the labour relations of his employer. In this regard, we are satisfied that the legislation, as such, is not primarily concerned with the nature of that employer's business. In the instant

case, the evidence fails to disclose any material involvement by the employees subject to this application with any confidential information relating directly to the labour relations aspects of the respondent. Accordingly, we reject the respondent's submissions relating to its primary position that the employees as encompassed in the bargaining unit as initially proposed by the applicant, are inappropriate for inclusion therein because they exercise confidential duties within the meaning of Section 1(3)(b) of the Act.

16. Having reviewed the representations of the parties in this matter, and taking into account the Board's normal practice in this respect, we further find that both a full-time and part-time bargaining unit of employees to be appropriate in the particular circumstances of this case. As regards the full-time unit, the parties during the course of the Examiner's meetings, reached the following agreements:

- "(1) The parties agreed that M. Cruikshank classified as Night Key Punch Supervisor and S. Giles, classified as Day Key Punch Supervisor, exercise managerial functions within the meaning of section 1(3)(b) of the Act and accordingly are not appropriate for inclusion in any bargaining unit that is forthcoming as a result of the Board determination of this matter under inquiry.
- (2) The parties agreed that F. McMahon, classified as Night Shift Group Leader, does not exercise managerial functions within the meaning of section 1(3)(b) of the Act and accordingly is appropriate for inclusion in any unit that is forthcoming as a result of the Board determination of this matter under inquiry."

17. Having carefully reviewed the evidence as adduced in relation to Pat Kingston, classified by the respondent as "Secretary to the President", we find that she is not employed in a confidential capacity in matters relating to labour relations and that she is therefore properly included in the full-time bargaining unit.

18. As regards Gregory McDonald, classified by the respondent as "Driver", it is the position of the respondent that he is part of the office, clerical and technical staff, or in the alternative, that he shares a community of interest with these employees. Having carefully reviewed the evidence as adduced in this regard, we are satisfied that McDonald shares a sufficient community of interest with the remainder

of the employees as encompassed in the full-time bargaining unit so as to warrant his inclusion therein.

19. The respondent's submission in relation to the Salesmen (viz. J. Cuthbert, W. McCrae, D. Ross and G. Stone) is that they share a community of interest with the remainder of the employees in the bargaining unit as proposed (especially with the Systems Representatives and, to a lesser extent with the Customer Service Representatives) and that the applicant should not be permitted to carve sales staff out of such a unit. The applicant, on the other hand, maintains that these "outside salesmen" lack the requisite community of interest with the remainder of the office, clerical and technical employees, and therefore ought to be excluded on that basis. The evidence as adduced in this regard establishes that although the salesmen spend approximately the same amount of time outside of the office as do the Systems Representatives, (e.g. upon a 70% outside - 30% inside ratio) and that both groups have a common supervision, we are satisfied that their inter-relationship in the servicing function is essentially limited to the relatively few occasions where both groups are represented when attendance is required at the client's premises in order to initially "install" a new account or where there is a problem with an existing account. In this regard, the evidence also discloses that the Salesmen spend only approximately 15% of their time working in conjunction with the Systems Representatives and/or the Customer Service Representatives.

20. Having carefully reviewed the totality of the evidence as adduced in this regard, we are satisfied that there is a clear delineation between the Salesmen, who are paid upon a commission basis, as compared to the remainder of the employees who are paid on a salary basis. We are further satisfied that the primary function of the Salesmen is to prospect for potential new business, that is to say - to sell. The primary function of both the Systems Representatives and the Customer Service Representatives, we find, is essentially one of providing service to the client on an "outside" and "inside" basis, respectively. Having regard therefore to the principles as established in the Usarco Limited Case, September OLRB M.R. 1967 p. 526, we are satisfied that there does not exist a sufficient degree of "functional coherence and interdependence" as between the Salesmen and the remainder of the employees encompassed in the bargaining unit as proposed, so as to warrant, in these circumstances, a departure from the Board's normal policy in excluding from an office unit sales personnel operating, for the most part, away from the office.

21. In all the circumstances, the Board accordingly finds that all office, clerical and technical employees of the respondent in Metropolitan Toronto, save and except supervisors, persons above the rank of supervisor, salesmen, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period, constitute a unit of employees of the respondent

appropriate for collective bargaining (hereinafter referred to as bargaining unit #1).

22. As regards bargaining unit #1, the final count discloses that the applicant has submitted 12 membership cards corresponding to the 17 names now appearing in the revised Schedule "A" of the respondent's lists. There were no "overlaps" appearing on the statements of desire filed with the Board relating to the employees in bargaining unit #1.

23. The Board is satisfied on the basis of all the evidence before it that more than sixty-five per cent of the employees of the respondent in bargaining unit #1 at the time the application was made, were members of the applicant on August 15, 1973, the terminal date fixed for this application and the date which the Board determines under section 92(2)(j) of The Labour Relations Act, to be the time for the purpose of ascertaining membership under section 7(1) of the said Act.

24. A certificate will issue to the applicant with respect to bargaining unit #1.

25. The Board further finds that all office, clerical and technical employees of the respondent in Metropolitan Toronto regularly employed for not more than 24 hours per week and students employed during the school vacation period, constitute a unit of employees of the respondent appropriate for collective bargaining (hereinafter referred to as bargaining unit #2).

26. As regards bargaining unit #2, the final count in these proceedings discloses that the applicant has submitted 8 membership cards corresponding to the 11 names appearing in Schedule "B" of the respondent's lists. There was one "overlap" appearing on the statements of desire filed with the Board relating to the employees in bargaining unit #2. However, although duly notified of these proceedings, no person representing the petitioners appeared on their behalf at the initial hearing of this matter on August 30, 1973, and no such representative attended at any subsequent Board proceedings held in this regard. In accordance with the Board's usual practice, none of the petitioners was served with notice of any of these subsequent proceedings. In these circumstances we are therefore not now disposed to entertain the statements of desire at this stage of the proceedings. Accordingly it will not be necessary for the Board to entertain the evidence and representations of the parties concerning the matters raised in the letter of the applicant dated August 22, 1973 wherein it specifically reserved the right to invoke the application of the provisions of Section 7(4) of the Act.

27. The Board is satisfied on the basis of all the evidence before it that more than sixty-five per cent of the employees of the respondent in bargaining unit #2 at the time the application was made, were members

of the applicant on August 15, 1973, the terminal date fixed for this application and the date which the Board determines, under section 92(2)(j) of The Labour Relations Act, to be the time for the purpose of ascertaining membership under section 7(1) of the said Act.

28. A certificate will issue to the applicant with respect to bargaining unit #2.

DECISION OF BOARD MEMBER F. W. MURRAY: May 17, 1974.

1. I dissent.

2. While I agree with the decision of the Majority with respect to it's final conclusion with regard to that question concerning the issue of employees engaged in a confidential capacity in matters relating to labour relations within the meaning of Section 1(3)(b) of the Act, I do not share some of the reasoning used to arrive at this conclusion. I also agree with my colleagues with respect to the conclusions reached in paragraphs 16, 17, and 18 of the Board's decision.

3. It is with respect to the exclusion of the salesmen from the bargaining unit with which I primarily dissent. Having carefully reviewed all of the evidence, I would have found that the salesmen have a sufficient degree of "functional coherence and inter-dependence", not only the systems representatives, but also to a lesser degree the customer service representatives, such that they should not be separated from a bargaining unit representing this personnel. While it might be claimed that all three groups, namely the salesmen, the systems representatives and the customer service representatives, because of the sales and service nature of their work requiring them to work inside and outside of the Company's premises, could in themselves be considered a bargaining unit, in view of the overall nature of the service rendered by the respondent Company, I would have concluded that the most appropriate unit included all three of these categories as part of the overall bargaining unit.

4. Accordingly, I would not have excluded the salesmen from the bargaining unit described in the Board's decision as Bargaining Unit No. 1.

51-74-PH: London and District Building Service Workers' Union, Local 220, S.E.I.U., A.F.L., C.I.O., C.L.C. (Applicant) v. BEAVER FOODS LIMITED (Respondent).

BEFORE: Rory F. Egan, Alternate Chairman, and Board Members J. D. Bell and O. Hodges.

APPEARANCES AT THE HEARING: A. Campbell for the applicant; M. B. Cunningham and P. Tate for the respondent.

DECISION OF THE BOARD:

May 21, 1974.

1. The applicant has applied to the Ontario Labour Relations Board for consent to institute prosecution of the respondent for an alleged offence under The Hospital Labour Disputes Arbitration Act.
2. The applicant, following certification by the Board, commenced to bargain with the respondent with respect to the latter's employees working at the Palmerston & District Hospital with which the respondent had a contract for the supply of food services.
3. The respondent agreed to all the terms of a collective agreement proposed by the applicant except those relating to wage increases. The proposed agreement was identical to an existing collective agreement made between the applicant and respondent herein with respect to a hospital at Meaford.
4. Although the respondent did not accept the wage proposals, it did, however, indicate a willingness to meet the wage demands of the applicant provided it, the respondent, could persuade the Palmerston & District Hospital Board to adjust the food service contract so as to make the payment of the proposed wages economically possible.
5. The food service contract provided for termination of notice by either party. The hospital Board was not prepared to change the financial arrangements under the contract of service so as to provide the respondent with additional funds with which to meet the union's wage demands and furthermore gave notice of termination of the service contract with the respondent in accordance with the terms of that contract. The respondent as a consequence of the cancellation of the service contract by the hospital had no recourse but to lay off its employees in the Palmerston Hospital unit.
6. The applicant herein in a concurrent application sought leave to prosecute the Palmerston & District Hospital on the theory that the exercise of the applicant's bargaining rights had been frustrated by the cancellation of the hospital's contract with the respondent. The Board dismissed that application.
7. The Board in the present case finds that the evidence does not persuade the Board that any grounds exist for the granting of a consent to prosecute. The application is accordingly dismissed.

5386-73-M: DRYDEN 5¢ TO \$1.00 STORE LIMITED (Employer) v. Retail Store Employees Union, Local Union 832 (Trade Union).

BEFORE: R. A. Furness, Vice-Chairman, and Board Members J. D. Bell and P. J. O'Keefe.

APPEARANCES AT THE HEARING: Geral Otto for the trade union; David I. Wakely, Mrs. M. Cadario, Mrs. C. Hearsey, Mr. R. Hearsey, for the employer.

DECISION OF THE BOARD: May 22, 1974.

1. This is a reference from the Minister of Labour to the Board pursuant to section 96 of The Labour Relations Act. The Minister asks the question whether he has the authority under The Labour Relations Act to appoint a conciliation officer.

2. The request of the trade union for the appointment of a conciliation officer was received by the Minister on February 28, 1974.

3. The trade union takes the position that either timely notice under section 45 of The Labour Relations Act was given by it to the employer to negotiate a new collective agreement or that the parties met and bargained notwithstanding a failure to give a written notice under section 45 of The Labour Relations Act. The employer denies that such timely notice was given and also denies that the parties met and bargained.

4. The collective agreement between the employer and the trade union was in effect from January 1, 1972 until December 3, 1973. Section 20(b), (c), and (d) of the collective agreement reads:

"(b) If either party desires to terminate this Agreement as of midnight on the Thirty-first day of December, A.D., 1973, it shall, not less than thirty (30) days and not more than sixty (60) days prior to such date, give written notice to the other of such notice of termination.

(c) If either party desires to amend or revise this Agreement, it shall so give notice not less than thirty (30) days and not more than sixty (60) days prior to the termination of the Agreement.

(d) If neither party shall so give notice to terminate, amend, or revise this Agreement, it shall continue in effect from year to year, subject to termination, amendment or revision on written notice to the other given not less than thirty (30) days and not more than sixty (60) days prior to the termination date in any subsequent year."

5. The evidence before the Board failed to establish that the trade union either sent or that the employer received a letter dated November 13, 1973, in which the trade union stated that it was desirous of beginning negotiations with a view to negotiating amendments to the collective agreement between the employer and the trade union. A letter from the trade union to the employer dated December 31, 1973, the Board finds, was not mailed from Winnipeg until January 2, 1974, and was not received by the employer until January 4, 1974.

6. Neither the alleged letter dated November 13, 1973, nor the letter dated December 31, 1973, constituted timely written notice of a desire to bargain with a view to making a new collective agreement.

7. There remains for consideration whether the parties met and bargained as contemplated by section 15(2) of The Labour Relations Act. The evidence before the Board establishes that on February 20, 1974, Mrs. Carol Hearsey, the daughter of the President of the employer, called Mrs. Betty Hill and Mrs. Barbara Toskovich into the employer's office and reiterated that the employer had not received proper notice of the trade union's desire to negotiate for a new collective agreement. However, Mrs. Carol Hearsey informed Mrs. Betty Hill and Mrs. Barbara Toskovich, who are members of the trade union's bargaining committee, that her mother was prepared to offer certain unspecified wage increases to the employer's employees and also indicated that air conditioning would be installed once the employer had built new premises. There was no discussion of any of the union's proposals for a new collective agreement and the Board concludes that the employer, rather than meeting and bargaining with the bargaining committee or the trade union, was in fact making a unilateral and ex gratia gesture to its employees. The Board is therefore of the opinion that the employer and the trade union did not meet and bargain within the meaning of section 15(2) of The Labour Relations Act.

8. On the basis of all the evidence before the Board, the Board finds that the collective agreement between the employer and the trade union which purportedly terminated on December 31, 1973, in fact renewed itself until December 31, 1974.

9. It follows from the foregoing that the Minister, in our view, does not have the authority to appoint a conciliation officer in this matter.

3953-73-R: International Printing Pressmen and Assistants Union (I.P.P. & A.U.) of North America (Applicant) v. TORONTO STAR LIMITED (Respondent) v. Toronto Mailers' Union No. 5 (Intervener).

BEFORE: D. H. Kates, Vice-Chairman, and Board Members F. W. Murray and P. J. O'Keefe.

APPEARANCES AT THE HEARING: T. Dunne, R. Pryor and J. Love for the applicant; R. Weiler, C. Davies and K. Feldman for the respondent; R. Earles and W. Bull for the intervener.

DECISION OF VICE-CHAIRMAN D. H. KATES AND BOARD MEMBER P. J. O'KEEFFE: May 24, 1974.

1. This is an application for certification launched by the International Printing Pressmen and Assistants Union (I.P.P. & A.U.) of North America for all employees of the respondent engaged in mailing room work at its premises in the Town of Vaughan.
2. There were also two separate but related applications filed by the applicant for a similar unit at the respondent's Front Street and Yonge Street outlets in the Municipality of Metropolitan Toronto. (see Board File #3952-73-R and #3954-73-R). An examiner was appointed initially to inquire into the list and composition of the bargaining unit and more particularly the extend of interchange between the employees of the Town of Vaughan and employees at its two Metropolitan Toronto outlets. These two applications were subsequently withdrawn and further inquiry by the examiner thereby became superfluous.
3. The Toronto Mailers' Union No. 5 intervened in all three applications and filed a collective agreement in support thereof. The intervener and respondent were parties to this collective agreement covering a group of employees engaged in mailing room work. The collective agreement was effective from January 1st, 1963 to December 31st, 1964. The bargaining unit described in the recognition clause was without geographic limitation and as such, constituted a province wide agreement.
4. At the outset of the hearing counsel for the applicant argued that the intervener lacked status to intervene in these proceedings. And, even if it did, it was submitted that through the effluxion of time since the expiry of the agreement described in paragraph #3 herein, the intervener had abandoned bargaining rights.
5. At the hearing the Board determined that the collective agreement was sufficient evidence to confer status upon the intervener to be a party to these proceedings in absence of any evidence to persuade the Board that bargaining rights had otherwise terminated. (see more particularly; Regina v Fuller, ex part Earles and McKee (1968) 70 D.L.R. (2d) 108 (CA) per MacKay J. A. at page 113).
6. Nevertheless, since no collective agreement had been entered into since December 31, 1964, we were of the opinion that the onus should be placed on the intervener to satisfy the Board that it still maintained bargaining rights.

7. In seeking to discharge this onus, the intervener called two witnesses; namely Mr. Robert Earles, international representative, and Mr. William Bull, President of Local 5. Their joint testimony and the documentary evidence adduced through them represent the evolving nature of the bargaining relationship maintained by the parties through the intervening years. The Board proposes at this point to sketch that history.

8. It seems that on July 9, 1964 the intervener's sister local, Toronto Typographical Union, Local 91 commenced a lawful strike against the three major Toronto newspaper publishers in existence at that time. Pursuant to a clause in the collective agreement between the intervener and the respondent employer, employees represented by the intervener elected not to cross a picket line established pursuant to the lawful strike. Members of the intervener manned the picket line and generally lent support to the cause of the striking employees. After several months the employer ceased to extend benefits to employees covered under the subsisting collective agreement between respondent and intervener. The matter of lost benefits was grieved by the intervener and ultimately proceeded to arbitration. The arbitration board denied the grievances and the said award was upheld on review by the High Court and the Court of Appeal. (see; Regina v Fuller et al ex parte Earles and McKee (1967) 62 D.L.R. (2d) 156 (HC); (1968) 70 D.L.R. (2d) 108 (CA)). It was indicated to the Board that leave to appeal these decisions to the Supreme Court of Canada was filed but was recently abandoned.

9. While these proceedings took their course members of the intervener continued to support the picket line at the respondent's premises in Metropolitan Toronto. In fact, these pickets continued until October 25, 1971 at which time the parent international withdrew all financial support.

10. In April 1965, the intervener made a concerted effort to negotiate the return to work of its members. At this time the intervener and respondent were engaged in the negotiation of a renewal of the expired collective agreement described in paragraph #3 herein. The respondent declined the interveners efforts to gain the return to work of its members save upon acceptance of a proposed collective agreement. This proposed agreement was unacceptable to the intervener. The parties never did enter into a new collective agreement notwithstanding the efforts of conciliation services provided by the Ministry of Labour. It appears that on September 29, 1965 the Minister of Labour released to each of the parties the report of a conciliation board.

11. The years between 1965 and 1968 were concerned mainly with efforts by the intervener to reverse the arbitrator's award and thereby recoup lost benefits that resulted therefrom. Nevertheless

the effect of subsequent judicial pronouncements permitted the employer to treat as terminated the employment contracts of those persons who refused to cross the picket line. The Board heard evidence of numerous contacts between representatives of the intervener and officials of the employer for the purposes of retrieving benefits under the pension schemes negotiated in past agreements. These piecemeal proposals were rejected by the employer. There was also some evidence adduced of the intervener's attempts to find jobs for its members in the United States. But these efforts also proved abortive because of difficulties encountered in procuring the necessary visas.

12. During this period aside from sporadic attempts to negotiate the return to work of employees no bargaining took place with a view to entering into a collective agreement.

13. In the Autumn of 1970, matters pertaining to the parties dispute appeared at an impasse. Over the years the respondent Star hired persons to replace and perform the mailing room work of dispossessed members. The intervener at this time initiated a campaign to sign up as members the replacements hired by the respondent. The purpose of this campaign (as attested by the witness, Mr. William Bull) was to apply to the Board for certification. With this certificate a renewed effort was to be made to secure a contract on behalf of all the respondent's employees. In Mr. Earles evidence it was stated that during the process of organizing these employees several assurances were made. The incumbent employees were told that they would not be required to participate in any strike in support of the plight of the members of the association. And furthermore, they were guaranteed that in the event that the intervener was certified their jobs were secure. That is to say, the positions filled by them at the time of hiring would not be lost to the people whom they allegedly replaced. The intervener filed with the Board 43 duly executed combination applications for membership documents, all of which were dated in October and November 1970.

14. No application for certification was ever filed with the Board. Nevertheless, incidental to the organizational campaign an unfair labour practice complaint was filed against the respondent alleging the discharge of one David Ferguson, for union activity. After protracted proceedings the allegations by the trade union were denied by the Board. (see; The Toronto Star Limited Case OLRB M.R. April 1971 221; OLRB M.R. June 1971 346, OLRB M.R. September 1971 582). When pressed to explain why no application was filed Mr. Earles stated that he could not procure a definitive legal opinion on the chances for success should such an application be filed. Mr. Bull suggested that both the protracted proceedings before this Board with respect to the unfair labour practice allegations and the concurrent collective bargaining difficulties at The Toronto Telegram cooled many of the respondent's employees

to representation by the intervener. Many of them withdrew their support.

15. In August of 1971 the respondent commenced operations at its premises in the Town of Vaughan (referred throughout the hearing as "The Rotor Plant"). At no time did the intervener or its sister Local 91 picket the premises at Vaughan nor were any of the intervener's members employed at the respondent's new plant. The intervener's claim to representative rights for the employees at Vaughan are made pursuant to the province wide agreement referred to in Paragraph #3 herein.

16. On October 25, 1971, the picketing at the respondent's Metropolitan Toronto outlets ceased. A decision was made by the intervener's parent to cut off financial aid to the striking employees. Without strike benefits, Mr. Earles testified, there was nothing left to sustain these members. Throughout the years many of the members sought and secured employment elsewhere, some returned to work for the respondent and others merely "rode along" on the strike benefits.

17. From October 1971 to the date of the filing of the instant application (June 25, 1973) no further contact with the respondent was initiated by the intervener with a view towards the negotiation of a collective agreement.

18. The issue before this Board is whether the intervener has maintained its bargaining rights over the intervening years. The intervener asserts that it still retains bargaining rights for the employees affected by the instant application. Mr. Earles argued several reasons why the Board should accept this position. The clearest indication of the continued existence of bargaining rights is the fact that no formal application has ever been made by employees in the bargaining unit or the employer respondent for termination of bargaining rights under the appropriate provisions of The Labour Relations Act. Furthermore, it was submitted that the intervener, having regard to the evidence, actively pursued its rights throughout and only curtailed activities when the parent cut off strike benefits. Upon the instant application being made the intervener filed an intervention and sought to preserve its interests in maintaining its bargaining rights by appearing on the ballot of any representation vote directed by the Board.

19. The applicant took the position that over the years the intervener took several steps inconsistent with a continued viability of bargaining rights. It was asserted that immediately after the release by the Minister of the conciliation board report in September 1965 and for some time thereafter the intervener may have maintained bargaining rights. Nevertheless during the course of its efforts to organize employees with a view to applying for certification in

order "to get back in so it could start collective bargaining" and certainly once the picketing ceased in October 1971 the intervener had abandoned its rights. The evidence as adduced before the Board, it was submitted, was more consistent with rights lost than with rights maintained.

20. The respondent herein throughout the hearing adopted a neutral position with respect to the status of the intervener's rights.

21. In reaching a conclusion on the issues raised by the applicant trade union the Board must have regard to the purposes of The Labour Relations Act and the effectuation of the objectives of The Legislature in supporting and encouraging the processes of collective bargaining. It is with this overriding objective that the Board proposes to deal with the application of the arguments submitted by the parties to the events as they unfolded through the evidence adduced.

22. It was never made clear to the Board whether the cause of the continued picketing of the respondent's premises in Metropolitan Toronto arose out of the events of July 9, 1964 or the release by the Minister of the conciliation board report in September, 1965. Mr. Earles made reference to attempts to secure the return to work of its members in April, 1965 (see, Exhibits 2 & 3). The employer took the position on the advice of counsel that these employees had engaged at all material times in an unlawful strike and therefore were justified in treating the collective agreement and the articles therein as inoperative. (see; Exhibit #4). The decisions of the courts on review of the arbitrators award in our opinion only stood for the proposition that the employer had cause to terminate the services of those employees who refused to cross the picket line. These decisions however did not affect bargaining rights and the intervener was not thereby precluded from engaging the employer in negotiations for a new agreement in accordance with the terms of the expired agreement and the relevant provisions of The Labour Relations Act. The evidence also indicated that all the employees (approximately 140-145) who worked in the respondent's mailing room save five or six honoured the picket line. Of those employees who crossed the picket line, the Board heard no evidence with respect to whether they engaged in a strike when the operation of the Act permitted them to do so. In any event, the intervener initially at the time they tried to negotiate the return to work of its members treated these dispossessed employees as being "locked-out". It was only as time passed that they were looked upon as being formally on strike.

23. During the period between April 1965 and October 1970, no serious attempt to bargain was made by either party. No new proposals were entended and hence no counterproposals were received. In fact in answer to the intervener's attempt to secure the return to work of its members, the employers proposed terms of an agreement which were rejected out of hand by the intervener. No counterproposal was made. After the

release of the conciliation board report no further bargaining took place. Only in isolated instances was contact made with the employer with a view to exploring the return to work of members and the securing of pension benefits. The nature of the intervener's activities during this period is significant because the emphasis appears to have been placed on retrieving lost ground occasioned by the arbitrator's award ruling that members had engaged in an unlawful strike rather than in devising means to persuade the employer to return to the bargaining table. This standing by itself clearly would not lead the Board to conclude that the intervener had abandoned or otherwise had permitted its rights to dissipate.

24. In 1970 the intervener's position with respect to its bargaining relationship with the employer was at an impasse.

25. In the months of October and November 1970 the intervener's attempts to organize employees of the respondent in its mailing room operations was unsuccessful. Nonetheless counsel for the applicant argued quite forcefully that the attempt to "reacquire" bargaining rights "in order to get back in and bargain" with the respondent was an act inconsistent with the continued maintenance of rights. Furthermore, the argument is made more compelling by the assurances given incumbent employees by the intervener with respect to their job security in the fact of the closed shop and seniority provisions of the expired collective agreement. The inescapable inference urged upon the Board is that a trade union does not cause its members to endure a protracted strike of the nature described herein and six years thereafter extend such assurances to incumbent employees who have replaced striking members unless bargaining rights have in fact been treated as abandoned.

26. The Board on considering this argument has attached some weight to the fact that at the material time of the organizational campaign these striking members continued to picket the respondent's premises. We are of the view that an inference may equally be drawn that the impugned organizational campaign was conducted with the knowledge and indeed the approval of the striking members. It was not until a year after the organizational campaign commenced that the decision was made to abandon it. During this period of time we are quite satisfied that recourse to certification proceedings would have been a fruitless gesture. Nevertheless, the campaign to organize when reviewed in perspective of the history of this dispute may quite reasonably be characterized as a dramatic ploy designed to rejuvenate what appears to have been a dormant situation.

27. In October 1971, when strike benefits ceased the picket line was abandoned. The evidence indicates that no further contact with the respondent was made until Local 5 filed its intervention to the

instant application. Thus for a period of twenty months the intervener appears to have made no real effort to further the cause of the employees. Counsel for the applicant argues the Board's decision in The Southam Company Limited Case 59 CLLC ¶18,130 (otherwise known as "The Hamilton Spectator Case") in support of the proposition that it would do violence to the intention of the Legislature to hold that in these circumstances bargaining rights still continued. The curious distinction between the circumstances of "The Hamilton Spectator Case" and this case is the four years consumed by court litigation contesting the arbitrators award. Although it may very well have been prudent, if not desirable, for the parties to have bargained with a view to entering into a collective agreement during this period, we are hard pressed to prejudice any party to a collective bargaining relationship in matters within our jurisdiction because recourse was made to the judicial process. It therefore follows that in terms of a linear measure, we are not persuaded on these facts to find an abandonment. Rather, in the exercise of our jurisdiction, the Board finds that leaving to all employees concerned the option of selecting a trade union of its own choice through the process of a representation vote is more in keeping with the aims and purpose of The Labour Relations Act.

28. The Registrar is therefore directed to list this matter for continuation of hearing with respect to all other outstanding matters.

DECISION OF BOARD MEMBER F. W. MURRAY: May 24, 1974.

1. I dissent.

2. Surely, if the intervener held bargaining rights in the months of October and November, 1970 when the intervener conducted a campaign to organize the respondent's mailing room employees, as it presently asserts this was both a redundant and superfluous act. It could be argued that the attempt to organize the employees who replaced the striking members was a means of recouping lost bargaining power. Moreover, Mr. Earles testified that during the course of the campaign the incumbent employees were told that they "would not be thrown out" by operation of the "closed shop" provision under the old agreement. Furthermore the seniority provisions under the expired agreement would not be relied upon "to get old employees their jobs back". Rather, only when vacancies were created by attrition would old members be given the opportunity for re-employment. I am of the opinion that the intervener's attempt to organize the very employees who were responsible for filling positions vacated by striking members and more particularly, the guarantees extended them with respect to their job security were acts consistent with lost bargaining rights. Furthermore, I have also analyzed the statements made by Mr. Earles with respect to whether incumbent employees would have to lend support to the picket line should the necessary majority in the certification proceedings be achieved. I am of the view that the assurance given incumbent employees that they would not be required nor

invited to support the cause of the striking members is indicative of a disposition to treat bargaining rights once held as lost.

3. In my opinion of greater import is the fact that in October 1971 when strike benefits ceased the picket line was abandoned. And from this date to the date of the filing of the instant application, according to Mr. Earles testimony, no further contact was made with the respondent. I am quite satisfied that the instant application triggered renewed interest by Local 5 in representing the employees concerned. I am equally satisfied that had there been no other interested trade union who sought to represent employees in the respondent's mailing room in the Town of Vaughan these employees would continue to be deprived of rights of representation through collective bargaining. I am therefore of the opinion that at the relevant time of the launching of the instant application bargaining rights once held by the intervener were lost.

4. In reaching this conclusion, I have considered very important the Board's reasoning in The Southam Company Limited Case 59 CLLC ¶18,130 (otherwise known as "The Hamilton Spectator Case"). In that case the International Printing Pressmen and Assistants' Union of North America applied to be certified for a craft unit of stereotypers and their apprentices in the employ of the respondent employer. The Hamilton Typographical Union, No. 129 filed an intervener's application for certification. Its application was dismissed because it did not have the requisite evidence membership to entitle it to a vote. Nevertheless Local 129 contended that its name should appear on the ballot in light of past collective agreements negotiated with the respondent employer affecting the employees for whom the applicant sought bargaining rights. It appears that on expiry of the last agreement employees represented by the intervener engaged the respondent employer in a strike. A picket line was maintained without disruption and at much expense for a period of twelve years. During the period immediately preceding the application for certification the Board was satisfied that there was not a "title" of evidence to show...it has made any attempt whatsoever to bargain with the employer on behalf of the employees concerned". Thus in reaching the conclusion that Local No. 219 should not appear on the ballot the Board stated (at p. 1756);

"In the circumstances of this case, the Hamilton Typographical Union, No. 129, cannot in our opinion, successfully assert a claim that it is still entitled to bargain on behalf of the employees in the bargaining unit for whom it was the bargaining agent at the time when the strike commenced. If it were entitled to assert such a claim, it would also be entitled now, after the lapse of twelve years, to call upon the employer to bargain with it, on pain of prosecution if the employer

refused to do so, an untoward result that in our opinion could not have been in the contemplation of The Legislature."

5. I would have followed this conclusion and found that the intervener has ceased to represent the mailing room employees of the respondent.

5163-73-R: Association of Commercial and Technical Employees, Local 1704, (C.L.C.) (Applicant) v. UNITED STATES FIDELITY AND GUARANTY COMPANY (Respondent) v. William D. O'Hara (Intervener).

BEFORE: Frank V. Boscarior, Vice-Chairman, and Board Members H.J.F. Ade and E. Boyer.

APPEARANCES AT THE HEARING: L. Ingle, W. Howes and P. R. Anidjar for the applicant; J. P. Sanderson, W. G. Phelps and R. Baldwin for the respondent; J. P. Borden and W. D. O'Hara for the intervener.

DECISION OF VICE-CHAIRMAN FRANK V. BOSCARIOL AND BOARD MEMBER E. BOYER: May 27, 1974.

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2. Pursuant to the decision of the Board in this matter dated February 25, 1974, the Board directed the taking of a pre-hearing representation vote amongst the employees of the respondent in the voting constituency as defined therein. This vote was conducted on March 8 at which time the Registrar ordered the sealing of the ballot box upon conclusion of the said vote. It would appear that five persons had cast segregated ballots during the course of the vote and by the decision of the Board dated April 16, 1974, an Examiner was appointed to inquire into the duties and responsibilities of these challenged persons.

3. The matter came on for initial hearing before the Board on April 30, 1974, for the purposes, inter alia, of dealing with the written representations as filed by the applicant. These representations were to the effect that the Board, in the particular circumstances of this case, should invoke the provisions of Section 7(4) of The Labour Relations Act and certify the applicant outright on the basis that the true wishes of the employees were not likely to be disclosed by a representation vote, having regard to the specific charges as filed by the applicant herein. Counsel for the respondent at the hearing raised a preliminary objection to the Board entertaining such a request on the basis that the provisions of Section 7(4) are not applicable to pre-hearing representation vote proceedings as contemplated under Section 8 of the said Act.

4. More specifically, it is the submission of counsel for the respondent, that by virtue of its place in the statute (e.g. Section 7 of The Labour Relations Act) and the specific rules and regulations of the Board pertaining thereto, it would therefore follow that such proceedings, in relation to an "ordinary" application for certification, having nothing to do with and are not applicable to pre-hearing representation vote proceedings, another distinct statutory type of application for certification, as set out in Section 8 of the said Act. In the latter case, it is submitted that the only appropriate remedy available to the applicant in relation to its charges would be to apply to the Board for consent to prosecute on the basis of an alleged unfair labour practice. Counsel for the respondent further argues that these respective sections of the Act are irreconcilable and incapable of "marriage", and that once the applicant has embarked upon the latter type of application, it cannot subsequently utilize the machinery available to it, had it initially chosen to proceed by way of an "ordinary" application.

5. In this regard, counsel for the respondent further argues that the Board's notice (Form 6) in pre-hearing vote proceedings, does not make provision for employees to intervene. He also cited to us the Caldwell Linen Mills Limited case OLRB M.R. March 1967 p. 948, where at page 950, the Board stated as follows:

"It should be noted that in a pre-hearing representation vote application neither the Act nor the Board's Rules of Procedure contemplate statement of objections or withdrawal of membership evidence. It would appear that the reason that this is not contemplated is because the employees will have an opportunity to express themselves with respect to representation by the applicant union by casting their ballot in the representation vote."

6. The relevant legislation in these proceedings has received some attention from the Ontario High Court in the recent decision of the Divisional Court in Re Canadian Union of Operating Engineers and Imperial Tobacco Products (Ontario) Ltd. et al 36 D.L.R. (3d) 641. The headnote to this decision reads in part as follows:

"The procedures for seeking certification under ss. 6 and 7 on the one hand, and under s.8 on the other, are mutually exclusive and establish clear procedural and substantive differences between the positions of persons affected by an application. An applicant for certification has an election as to which procedure it wishes to follow but, once having elected to proceed by way of s.8 of the Act, it cannot, without leave of the Board, convert an application under s.8

to one under ss. 6 and 7 and retain the benefit of the time of application and any other advantage that might pertain to applications thereunder. The Board is master of its own procedure and, having determined that the applicant had not established a prima facie case for a pre-hearing vote, it was free either to refuse the request for a pre-hearing vote or to dismiss the application outright."

7. Although the majority of the court in the above quoted decision determined that this legislation contemplates two types of applications, it did not, in our opinion, confine or restrict such applications solely to the specific wording as contained in the respective provisions of Section 7 and 8 of the Act. As indicated above, the court recognized that the Board is master of its own procedure and its general power in this regard is set out in Section 91(12) of the Act. Further, the provisions of Section 92(2)(f) of the Act are more specific and give the Board power "to enter upon the premises of employers and conduct representation votes during working hours and give such directions in connection with the vote as it considers necessary;". (emphases added)

8. Moreover, in the Coca-Cola Ltd. case, OLRB M.R., September 1967 at p. 548, the Board saw fit to apply the former provisions of Section 7(3) of the Act to pre-hearing representation vote proceedings, on the basis that Section 7(3) became applicable "by operation of Section 8(4) of the Act, which reads in part, as follows:

...the representation vote taken under subsection 2 has the same effect as a representation vote taken under subsection 2 of section 7."

In our opinion, we are not convinced as to why such reasoning could not likewise be pertinent in relation to the provisions of Section 7(4) of the Act.

9. In the result, we reject counsel's submissions in this regard and we therefore conclude that the provisions of Section 7(4) of the Act are applicable to proceedings in relation to pre-hearing vote applications filed pursuant to the provisions of Section 8 of the said Act.

10. The Registrar is accordingly directed to list this matter for continuation of hearing for the purpose of entertaining the evidence and representations of the parties in relation to all outstanding issues. In these particular circumstances, the Registrar is further directed to effect notice of these proceedings upon the employees encompassed in the voting constituency as defined in the decision of the Board dated February 25, 1974.

DECISION OF BOARD MEMBER H.J.F. ADE: May 27, 1974.

1. I regret that I am obliged to dissent from the decision of my colleagues in this matter.
2. The question for consideration by the Board is the application of section 7(4) of The Act to this Application for Certification. It is to be emphasized that this Application is a pre-hearing application pursuant to Section 8 of The Act. The Board on receipt of the Application proceeded to conduct an examination of the records of the trade union and the records of the employer and based on this examination determined that not less than 35% of the employees in the voting constituency were members of the trade union at the time the Application was made. Having made this determination and in accordance with Section 8(2), the Board then directed that a representation vote be taken. Subsequently, the vote took place but the Board in response to communications received from the Applicant Union directed that the ballot box be sealed pursuant to sub-section 3 of Section 8. The point at issue, therefore, is whether the Board ought to hear evidence and submissions with respect to the application of Section 7(4) in accordance with the request of the Applicant Union.
3. It is clear from the Act that a trade union which desires to obtain certification for a group of employees may proceed in two ways. The trade union may file an Application for Certification in accordance with Section 7 of The Act and the Board has long standing policies and procedures as to how such Applications shall be processed in accordance with the Act and the appropriate Regulations. In the alternative, the Union may invoke Section 8(1) and request that a pre-hearing representation vote be taken. As I have already stated the procedure and practice, as set out both in the Act and Regulations as well as the Board policies, are quite different as to the manner in which such an Application is to be processed.
4. It is my view that Section 7(4) of the Act cannot be used with respect to a pre-hearing Application. It is apparent from a close reading of the Act that this Section is an integral part of Section 7 of the Act and was intended by the legislature to be applied in Applications for Certification filed under this Section. It is trite law to state that a sub-section which is an integral part of a statutory section in the absence of clear words to the contrary is not to be used in a general sense or with reference to further sections of the Statute and other forms of Applications described elsewhere in the Statute.
5. There is a further and in my view decisive reason for my dissent. A condition precedent as to the use of Section 7(4) is that the Board must first be satisfied that more than 50% of the employees in the bargaining unit are members of the trade union. In this case no such determination has been made nor can it be made.

If the Board were now to proceed to make such a determination, it would follow that the Application in question was no longer being processed or treated by the Board as a pre-hearing Application and the Board would be acting contrary not only to the provisions of Section 8 in the processing of such Application but also contrary to the Regulations and the policies of the Board in regard thereto.

6. In all fairness it might well be considered that the provisions of section 7(4) would be desirable in certain instances surrounding a pre-hearing vote and I face it as an arguable proposition, but make no finding on this point. However this may be it is clear that given the legislation as it now stands the majority has asked themselves the wrong question and has trespassed where it has no jurisdiction. It is not the function of this Board to meet an end however desirable such may appear, through a circuitous route based on reasoning which in my view is not supported by law and where no discretion has been statutorily provided.

4442-73-M: METROPOLITAN SEPARATE SCHOOL BOARD (Applicant) v. Canadian Union of Public Employees and its Local 1328 (Respondent).

BEFORE: D. H. Kates, Vice-Chairman, and Board Members O. Hodges and J.E.C. Robinson, Q.C.

DECISION OF VICE-CHAIRMAN D. H. KATES AND BOARD MEMBER O. HODGES:
May 28, 1974.

1. This is a request for reconsideration of the Board's decision dated April 8, 1974 wherein it was determined that Miss Lynda Thomas, classified as a Secretary 2 is an employee for purposes of the Act.

2. In resolving the disputed status of whether Miss Thomas was an employee for purposes of the Act, the Board determined that she neither exercised managerial functions nor was employed in a confidential capacity in matters relating to labour relations. The applicant school Board appears to be requested reconsideration of the Board's finding with respect to Miss Thomas' status as a confidential employee.

3. In dealing with this issue the majority of the Board recorded in some detail the relevant evidence upon which the decision was based. The applicant for reconsideration does not appear to dispute the evidence but rather the inferences and conclusions the Board should discern therefrom.

4. In so doing the applicant has submitted neither additional evidence nor argument that was not otherwise available to it at the time of its initial decision. On this ground, alone, the Board finds the request for reconsideration should be denied.

5. But in nothing the remarks of the applicant in its request for reconsideration, the Board repeats Miss Thomas to be an employee for purposes of the Act because "the collating, sorting, scanning, filing and reading (if only in part) these confidential reports", was not a necessary part of her job function. We agree that Miss Thomas is employed to perform office and clerical duties. But those duties insofar as they required exposure to confidential information are not integral to the overall performance of her job. Indeed Mr. Barone indicated that he performed the functions of filing the confidential reports and the Board discerned from his statements that Miss Thomas would become involved in such duties as his alternate. Moreover, the majority of the Board is not prepared to reject the uncontradicted evidence of Miss Thomas when she stated that it was not her job to read the confidential material. We are therefore of the continued opinion that Miss Thomas is not employed in a confidential capacity relating to labour relations.

6. The application for reconsideration is therefore denied.

DECISION OF BOARD MEMBER J.E.C. ROBINSON, Q.C.: May 28, 1974.

Having already set forth my reasons why Miss Lynda Thomas exercised managerial functions within the meaning of section 1(3)(b) of the Labour Relations Act in my decision of April 8, 1974, I am of the opinion that it is unnecessary, nor am I able, to join with my colleagues in their decision denying the request for reconsideration.

5529-74-R: Toronto Typographical Union No. 91 (Applicant) v. SYSTEMS EQUIPMENT LIMITED (Respondent) v. Group of Employees (Objectors).

BEFORE: D.E. Franks, Vice-Chairman, and Board Members P.J. O'Keefe and J.E.C. Robinson, Q.C.

APPEARANCES AT THE HEARING: Balfour MacKenzie, James Buller and Robert Earles for the applicant; W. Winkler D.I. Wakely, C. Phillips and E. Lynch for the respondent; Bob Hunt and Jim Brossoit for the objectors.

DECISION OF D.E. FRANKS, VICE-CHAIRMAN, AND BOARD MEMBER J.E.C. ROBINSON, Q.C.: May 28, 1974.

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3. There was filed with this application a statement of desire by some thirteen persons objecting to this application. Shortly before the hearing in this matter the applicant made certain charges with respect to the statement of desire filed by the objecting employees. At the hearing the Board heard evidence concerning the origination, preparation and circulation of the statement filed with the Board.

The evidence was clear that two of the employees of the respondent gathered all of the signatures on the statement filed by the objecting employees. Each of the employees at the respondent's operation was phoned at his home and those who were interested in objecting to the application were visited at their homes by these two employees. On the basis of all the evidence the Board is satisfied that the petition filed by the objecting employees reflects the voluntary wishes of those employees who have signed the statement objecting to the application. However, with respect to charges made by the applicant, the evidence presented at the hearing was not such as to indicate any management interference in the petition, nor any impropriety on the part of the employees who circulated the petition, and the charges as they relate to the petition are dismissed.

4. The applicant also requested that the Board apply section 7(4) of the Act and find that the true wishes of the employees are not likely to be disclosed by a representation vote. The evidence tendered by the applicant in support of this proposition relates first to a proposed pay increase tendered by the respondent to the employees. That offer was made prior to the application for certification by the applicant trade union. Before the proposed increase was implemented this application for certification was made. The respondent having regard to section 70(2) of the Act withdrew its offer to the employees. The applicant takes the position that it approves this offer. However, there has been no agreement between the trade union and the respondent employer with respect to implementing the proposed pay increase.

5. The applicant also tendered certain evidence concerning the general character and the condition at the respondent's plant. This evidence was of a general nature given by two employees and can be described as going to show that the present application has caused an increase in the tension between the employees and the employer at the respondent's plant.

6. The criteria which the Board uses in applying section 7(4) were set out in the Paragon Tools Company, Limited case, (1969) OLRB Mthly. Rep. 1051 (December). After quoting the following portion of the Wolverine Tube Ltd. case 63 CLLC 1226 -

"Reasonable and necessary inferences may and must be drawn from all the evidence adduced and that which is clearly inferable from the evidence is as much proved as if it had been established by direct evidence. Indeed, in reaching a decision as to whether or not employees have or have not been influenced by improper conduct on the part of a union or employer, the Board has often been constrained to view the objective facts and overt acts of the

parties with the reasonable inferences to be gathered from the, as more persuasive evidence of the true facts than the subjective assertions and counter-assertions of employees, given in the presence of the union or employer, that they were or were not influenced, or in what way, by the conduct in question. Needless to say, it is hardly possible for the Board to base its decision in such matters on the certainty of mathematical evidence. The most that can generally be expected is, and of course, the rule of evidence requires, that the Board will make its findings of act, in such cases as this, on what is the more probably conclusion in the circumstances."

the Board stated:

"What is "undue influence" for the purposes of the Board's determination? It does not just constitute overt and positive acts which can be proven beyond doubt, which are designed or intended to impel persons to react in the way indicated by the employer. It also implies that evidence of the total atmosphere or condition of the plant in relationship to the employees must be given weight in assessing this matter. This results from the inferences that can be drawn from the totality of the evidence relating to this issue."

However, on the evidence presented in this case we cannot find that there has been such conduct on the part of the employer as to prevent the true wishes of the employees being determined in a representation vote.

. . .

10. The matter is referred to the Registrar.

DECISION OF BOARD MEMBER P.J. O'KEEFFE: May 28, 1974.

1. The industrial relations scene in the instant case is one that is tragically only too familiar to this Board. The evidence here adduced through employee witnesses called by the applicant establishes that on April 17, 1974, four days prior to the union applying for certification and at the closing stages of the union's organizing campaign the respondent employer called a meeting of the employees at which time he indicated to them that they were to receive a wage increase effective April 22, 1974.

2. The union applied for certification on April 22, 1974. As soon as the respondent company received notification of the union's application they then informed their employees that the already promised wage increase would not now go into effect because of the union's application for certification. They had, of course, some legal justification for the withdrawal of the wage increase in accordance with section 70(2) of The Labour Relations Act which provides that:

70.-(2) Where a trade union has applied for certification and notice thereof from the Board has been received by the employer, no employer shall, except with the consent of the trade union, after the rights, privileges or duty of the employer or the employees until,

- (a) the trade union has given notice under section 13, in which case subsection 1 applies; or
- (b) the application for certification by the trade union is dismissed or terminated by the Board, or withdrawn by the trade union.

The applicant union on April 26th wrote to the employer and indicated that it welcomed the proposed wage increase for the employees and in keeping within the spirit of section 70(2) of the Act consented to the proposed wage increase. The respondent employer did not respond to this consent and up to the time of the hearing continued to withhold the proposed wage increase from the employees.

3. Further evidence discloses that within a couple of days of the Board's notice of application going on the company's notice boards, that Mr. Bob Hunt together with another employee prepared a petition, the purpose being "to take a second vote to halt the union". Mr. Hunt testified that prior to him drafting and circulating the petition that he, together with other employees, was told by Mr. Phillips, the Plant Superintendent, that the proposed wage increase would not now be given to employees "because of all of the mess by the union". Mr. Hunt testified that he was upset by the company withholding his promised wage increase; he did not blame anyone for this situation but the responsibility for not getting his wage increase was because of the union coming in.

4. Mr. Michael Miscaneuk, a carbon operator with the company for the past two and one-half years, testified that at the meeting called

by the employer on April 17th, that he had been promised a wage increase of 28¢ an hour. Later he was told by his superior that the wage increase was held up. Some of his bosses were upset by the union's application for certification. There was harsh talk by certain employees about the union and the atmosphere in the plant became tense. He was visited by Mr. Bob Hunt and another employee who asked him to sign the petition against the union. As part of the petitioners' spiel to get him to sign the petition they told him among other things that if the union came in that his wages would be cut and if his presses stopped that instead of the present system whereby he stayed on the job with pay, that he would then be sent home and lose pay. He testified that as a result of the various activities, including the visit by the petitioners to his home since the union's application for certification, that he was distressed as there was a baby on the way in his family and he was worried about how he was going to support his family.

5. Mr. Peter Both an employee of the company, testified that he had attended the meeting called by management on April 17, 1974, and he was told at that time by Mr. Ernest Lynch, Eastern Divisional Plant Manager, about the general wage increase. Sometime later Mr. Phillips the Plant Superintendent, told him that his wage increase would be in the amount of 37¢ an hour effective April 22, 1974. Later again he was told by Mr. David Cartledge, his supervisor, that the wage increase was held back because of the union matter.

6. He testified that the past normal practice was that he would set up his machine and when it was operating he would sit down and watch it operate.

7. He said that a few hours after the union's application for certification went up on the notice board that his foreman came to him and told him that he was not to sit down any more. He felt that this order was brought about as a result of the "paper going on the board applying for the union". Later he had a discussion with his foreman about the union and the foreman told him that he, the foreman, did not want to see the witness' name on any list for the union. Mr. Both testified that he told the foreman that he (the foreman) "won't find my name on any list of the union".

8. His testimony was to the effect that his foreman previously had been a polite person and that his relationship with him had been friendly, but after the union came on the scene the foreman acted in a very "unlike manner". The foreman had insulted him by calling him "fatso". The foreman told the witness that "if I keep acting like this, I would be out the door". Mr. Both testified that as a result of all this that he was very upset because he believed the foreman wanted "to fire me".

9. Mr. Ralph Geniol, an employee with eight years service,

testified he was present at the April 17, 1974 meeting at which the general wage increase had been promised. He did not receive the wage increase and when he asked the reason why not he was told it would be held back until the union matter cleared up. He testified that the atmosphere in the plant changed since the union matter came up. Prior to the union appearance he had never felt the same atmosphere of "cold shoulderness given to people". Since the union matter arose he had a discussion with Charlie Phillips the Plant Superintendent. He said that Phillips flares up more than previously. The witness said that now he is "always looking over his shoulder to see if a camera is on". He is wary "not to do anything wrong and scared to make a mistake". Under intense cross-examination he attributed the current atmosphere in the plant and certain company actions to their reaction to the union. If the present situation did "not mean union, what did it mean?"

10. The union applied for certification and its membership evidence establishes that it had signed up in excess of 65% of the employees in the bargaining unit.

11. The petition evidences that thirteen employees signed the petition, and of these, three employees who had originally signed cards also signed the petition. This then represents an overlap, which, if the Board gives weight to the petition, reduces the union's membership position below 65%; in fact to a position of clear undisputed evidence of 62.2% of the employees affected.

12. The union submits that the petition be disallowed because it does not represent the voluntary wishes of the employees and in the alternative, if the petition is allowed that the Board exercise its discretion under section 7(4) of The Labour Relations Act and certify the union without a vote, because any vote now conducted by the Board in light of "the withholding of announced wage increases by the company, even though the union gave official written consent, and the atmosphere of threats, intimidation and harassment noted previously, that a representation vote would not likely reveal the true wishes of the employees. The above noted section 7(4) of the Act reads as follows:

7.-(4) If the Board is satisfied that more than 50 per cent of the employees in the bargaining unit are members of the trade union and that the true wishes of the employees are not likely to be disclosed by a representation vote, the Board may certify the trade union as bargaining agent without taking a representation vote.

13. In light of the evidence already related in this decision with regard to the origination and circulation of the petition and the atmosphere of fear, conflict and insecurity created by the employer

immediately prior to and during the circulation of the petition, together with the obviously misleading and untrue statements made by the petitioners in their effort to have employees sign the petition, I would not hesitate to throw the petition out because I am satisfied with regard to the totality of evidence in this matter, that such a petition signed in this atmosphere could not possibly reflect the true and voluntary wishes of the employees who signed the petition.

14. In the alternative even if this petition were to be given weight by the Board I would exercise my discretion under section 7(4) of the Act and certify the union without a vote of the employees, because in my opinion any vote conducted by the Board in this matter now is not likely to disclose the true wishes of the employees.

15. The evidence in this case discloses a reaction by an employer faced with the organization of his employees into a union of their choice, as almost unbelievable in 1974. The action of the employer in promising increased wages to his employees at a time of the organization of his employees into a union, and a few days later withdrawing these proposed wage increases "because of the union", (despite the consent of the union under law to the proposed wage increase) smacks of arbitrary punitive penalties against the employees because they dare participate in their lawful right to join the union of their choice.

16. The subsequent changed atmosphere in the plant wherein the employer creates a setting of conflict between himself, the union and the employees who dared to participate in the lawful activities of the union, is a sorry reflection on the state of acceptance of certain employers in our society of the guaranteed rights by law of employees to join unions to protect their interest and to give them the full benefits of the Ontario Labour Relations Act. The evidence in this case clearly demonstrates the storm trooper bully boy tactics of an employer who rules over his "serf" employees as an absolute old time baron resorting to the crudest form of threats, intimidation and coercion, in an effort to prevent his employees participating in a union. The evidence of the employees establishes clearly that as a result of the actions of their bosses that they were frightened, tense, threatened, distressed, personally insulted, degraded and cold shouldered.

17. This type of employer I am happy to say is a rarity in Ontario at the present time. This type crops up now and again and generally there is a pattern to their initial and subsequent behaviour at the bargaining table, if in fact they cannot destroy the organization of their employees initially. It is this type of employer behaviour that is the root cause of current day uncivilized conduct in the industrial relations setting. It is this type of employer unfortunately that gives rise to the bitter confrontations on the picket

line and in the course of such behaviour involves our citizens and police force in bitter confrontation situations that tend to pull down all otherwise lawful civilized men. This type of employer is a disgrace and an embarrassment to the overwhelming number of other lawful employers in our society and surely it was this type of employer the Legislature had in mind when it enacted section 7(4) of The Labour Relations Act. If not, why would the Legislature enact a lawful provision in the Act to allow this Board to certify a union who has more than 50% of the employees as members without a vote if a representation vote is not likely to disclose the true wishes of the employees.

18. In enacting this section of the Act the Legislature was aware that there could be situations where a secret ballot representation vote would not disclose the true wishes of the employees. How could it be that such a situation could arise? The evidence adduced in this case with regard to the employer conduct and the consequent fear of the employees is crystal clear that section 7(4) has to be applied here if not the intent of the legislature is frustrated and made meaningless.

19. The law on the principles of statutory interpretation provides that it is basic in any inquiry into the meaning of an enactment that -

"A statute is the will of the Legislature, and the fundamental rule of interpretation, to which all others are subordinate, is that a statute is to be expounded "according to the intent of them that made it"...The object of all interpretation of a statute is to determine what intention is conveyed, either expressly or impliedly, by the language used, so far as is necessary for determining whether the particular case or state of fact presented to the interpreter falls within it ... (Maxwell on Interpretation of Statutes 9th ed. pp. 1-2)"

20. The evidence of the mischief in this case is self-evident and cries out for a remedy. Again quoting from Maxwell, *ibid* pp. 70-71:

"It is said to be the duty of the Judge to make such construction of a statute as shall suppress the mischief and advance the remedy. Even where the usual meaning of the language falls short of the whole object of the Legislature, a more extended meaning may be attributed to the words, if they are fairly susceptible of it..."

21. In the result I would exercise the discretion given to the Board in section 7(4) of The Labour Relations Act and certify the applicant union.

5585-74-R: Retail Clerks International Association (Applicant) v. SAYVETTE FAMILY DEPARTMENT STORE LTD. (Respondent).

BEFORE: Frank V. Boscariol, Vice-Chairman, and Board Members E. Boyer and H.J.F. Ade.

DECISION OF VICE-CHAIRMAN FRANK V. BOSCARIOL AND BOARD MEMBER E. BOYER: May 29, 1974.

1. Pursuant to the initial decision of the Board in this matter dated April 30, 1974, Mr. M. F. Neave, Examiner, was authorized to confer with the parties concerning certain preliminary matters with respect to this application for a pre-hearing vote filed pursuant to the provisions of Section 8 of The Labour Relations Act. The terminal date fixed by the Board for this application is May 8, 1974.

2. Accordingly, the Examiner convened a meeting of the parties on May 10, 1974, at which time the respondent filed with the Examiner its Form 9 reply, the relevant schedules of employees together with specimen signatures and one unsigned copy of the voters list. However, at this point, the respondent, on the instructions of its counsel, objected to proceeding further in this matter until the Board has rendered its decision in an earlier application for certification in the G. Tamblyn Limited case (Board File No. 4336-73-R). It would appear that in that case, the applicant has taken the position that certain persons working in the drug store section on the respondent's premises are employees of G. Tamblyn Limited. However, it would appear that for purposes of these pre-hearing proceedings, the applicant is not adverse to including such persons in the voting constituency.

3. In these circumstances, the Examiner directed that the parties present their written submissions to the Board for consideration.

4. By letter addressed to the Board and dated May 14, 1974, counsel for the respondent accordingly advised as follows:

"As requested at your meeting in London on Friday, this will serve to confirm the Respondent's position that the employment relationship and status of employees in the Respondent's Drug Department must be established before further proceedings, including a vote, are taken in this matter.

As the Labour Relations Board is aware, the Applicant herein has applied to represent employees of G. Tamblyn Limited in London (Board file 4336-73-R) and claimed Sayvette Drug Department employees are in fact employees of Tamblyn for the purpose of that Application.

It is the Respondent's view herein that the Applicant cannot claim to represent the same persons in two separate applications and adopt two mutually conflicting positions as to the employment status of the persons concerned. It is the Respondent's position that the Drug Department personnel are its employees and until this matter is determined or the Applicant has agreed to such status, no further proceedings herein are possible.

It is respectfully submitted that the employment status is a vital integral part of any determination by the Labour Relations Board as to the entitlement of a trade union to represent the employees concerned or to a vote for such purpose. Also, all of the arrangements concerning a vote, including the question on the ballot which identifies and sets out the name of the employer, requires the acceptance or prior determination of the correct employer as an integral condition of the vote.

The same issue has arisen in a complaint under Section 79 of the Act (Board File 5062-73-U - Betty Hill) who was employed in the Sayvette Limited Drug Department at London. The Labour Relations Board adjourned the hearing to a date to be set following a decision as to the proper Respondent.

If the Applicant is unwilling to adopt a consistent position in the Application referred to above, it is the Respondent's submission that the Board has no alternative but to follow the same procedure as in Board file 5072-73-U."

5. By letter dated May 13, 1974, the applicant stated the following:

"I submit to you an attached list of facts that I deem to be accurate, for your consideration.

The Union is asking that the Board take a pre-hearing vote so that all parties may determine the wishes of the people today and not some distant future date. We do not think that the hearing to set up the vote should be delayed because of a verbal statement made by the Company.

We believe the board has the right to accept the list with the challenged names, conduct the vote with

segregated ballots and seal the ballot box until the employee proper employer is determined."

The enclosed statement of facts reads as follows:

"On May 10, 1974 a hearing was held in London with an examiner and Sayvette dept. Stores Ltd. and the Retail Clerks International Association. The purpose being to set up a voters list for a pre-hearing vote.

Some of the people appearing on the Companies list were to be challenged by the Union. The Union believing they were the employees of another employer.

At present there is a case before the Board that has already gone through a number of hearings to determine that employer.

With this determination the ballots of a vote could be counted and any challenged votes could be dealt with accurately and placed in their proper perspective.

Thus there would not be a delay in taking the vote and the count would show the true wishes of the people while the organizing campaign is effective and not the feelings of the employees that have gone through delay after delay."

6. In the Hydro-Electric Power Commission of Ontario case OLRB M.R. July, 1968, p. 376, the Board had occasion to review the request of the intervener in those proceedings that a pre-hearing representation vote be postponed pending a hearing into certain issues raised therein. In rejecting the intervener's request, the Board at page 376 stated as follows:

"One of the purposes of a pre-hearing representation vote is to permit the Board to ascertain the wishes of the employees without delay. If there are unresolved issues, these may be dealt with after the wishes of the employees have been recorded. The ballot box may then be sealed so that the other issues can be resolved on their own merits.

Where, as in this case, the voting constituency is identifiable with reasonable accuracy and there is little likelihood that a second representation vote will be necessitated, no one is prejudiced if the Board directs that a representation vote

be taken and the ballot box be sealed. However, if the Board directed a hearing in order to resolve the issues raised by the other parties, prior to recording the support enjoyed by the applicant in a representation vote, and the Board subsequently determined that a representation vote should be held, the applicant's position might be adversely affected by the delay. For these reasons, the Board is of opinion that the pre-hearing representation vote requested by the applicant should be held in this case and that the ballot box be sealed pending the determination by the Board with respect to the objections raised by the intervener."

7. It would appear that the pre-requisites to the exercise of the Board's jurisdiction to order a pre-hearing representation vote as set out in Subsection 2 of Section 8 of the Act are essentially two-fold. Firstly, the Board determines a voting constituency and secondly, it must be satisfied upon an examination of the relevant records that the applicant has taken in membership not less than 35% of the employees encompassed in that voting constituency. There are no other qualifications for the Board exercising its discretion in this regard. Nevertheless, Subsection 3 of Section 8 of the Act does preserve the rights of the parties to present their evidence and make their submissions at a time subsequent to the taking of the vote in that the ballot box containing the ballots cast during the vote is sealed and the ballots are not counted pending a further order by the Board. Once the Board has had an opportunity to review the representations of the parties in this regard, it might very well conclude that the applicant does not in fact possess the necessary 35% membership in the voting constituency (or indeed for that matter - in the resultant bargaining unit found to be appropriate by the Board). Thus, it is not uncommon for the Board to subsequently dismiss such applications on this basis even though a representation vote has been held. Further, the practice adopted by the Board in this respect is in complete accord with the provisions of Subsection 2 of Section 8 of the Act, which does not require that the Board be "satisfied" (as is the case in the "ordinary" vote situation pursuant to Section 7(2) of the Act) with respect to the applicant's membership position. The only requirement imposed in this regard is that it merely "appears" as such to the Board. It is this statutory language which permits the Board to order an immediate vote upon such limited evidence and thus obtain the views of the employees as disclosed through a representation vote conducted with a minimum of delay, leaving other contested issues to be determined at a later date.

8. In the result, therefore, we reject the respondent's position that this pre-hearing proceedings be adjourned pending the further decision of the Board in the G. Tamblyn Limited case (supra).

9. It appears to the Board on an examination of the records of the applicant and the records of the respondent that not less than thirty-five per cent of the employees of the respondent in the voting constituency hereinafter described were members of the applicant at the time the application was made.

10. The Board directs that a pre-hearing representation vote be taken of the employees of the respondent in the following voting constituency:

All employees of the respondent at London save and except Store Manager and persons above the rank of Store Manager, Department Managers, Manager Trainees, Floor Supervisors and office staff.

11. The Board directs that the ballot box containing all the ballots cast in the pre-hearing representation vote be sealed and the ballots not counted pending the further direction of the Board.

. . .

15. The matter is referred to the Registrar.

DECISION OF BOARD MEMBER H.J.F. ADE: May 29, 1974.

Having regard to the inconsistent positions taken by the applicant before this Board, I would have adjourned these pre-hearing proceedings pending a final decision by the Board in this regard in the G. Tamblyn Limited case (supra).

3127-72-R: Local Union 633 and Local Union 175 Canadian Food and Allied Workers chartered by Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC (Applicants) v. ZEHR'S MARKETS LIMITED (Respondent) v. Busy B Discount Foods Limited (Intervener) v. Group of Employees (Objectors).

BEFORE: O.B. Shime, Vice-Chairman, and Board Members O. Hodges and J.E.C. Robinson, Q.C.

APPEARANCES AT THE HEARING: T.E. Armstrong, L.V. Pathe and D. Sexton for the applicants; W. Gibson Gray, Q.C. and Vern Barnett for the respondent; no one appearing for the intervener; Doug Sinnamon for the objectors; H. Jurchuk for the Retail Clerks Union.

DECISION OF O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBER O. HODGES WITH J.E.C. ROBINSON, Q.C. CONCURRING IN PART: May 29, 1974.

1. This is an application under section 55 of The Labour Relations Act wherein the applicants allege that they hold bargaining rights for employees of the respondent which arise as a result of a sale of a business by the intervener, Busy B Discount Foods Limited (hereinafter referred to as "Busy B") and to the respondent, Zehrs Markets Limited (hereinafter referred to as "Zehrs").
2. In 1964 the applicant unions were certified with respect to certain employees of Busy B at 101 King Street South at Waterloo. They then entered into successive collective agreements with Busy B; the most recent collective agreements covered all the employees at the store. Those agreements continued in effect until July 1, 1972.
3. Busy B ceased to operate at the premises at 101 King Street South, Waterloo, on or about January 28, 1972, and Zehrs commenced operating on or about November 1, 1972.
4. Busy B was at all material times a wholly owned subsidiary of Loblaw Groceterias Co., Limited and for the purposes of this application it is sufficient to recognize that Loblaw Groceterias Co., Limited in turn is a part of a group of businesses contained in the "Weston Group" of businesses. In addition, Zehrs is also part of the "Weston Group" of businesses although its lineage in the "Weston Chain" differs from Busy B.
5. A union official testified that in late 1971 he conferred with an officer of Loblaw Groceterias Co., Limited about the closing down of the Busy B premises at 101 King Street South, Waterloo, and the reopening of those premises under the name of Zehrs. The discussion centered on whether the union would assert bargaining rights if Zehrs reopened at the premises. The company was advised that the union would seek to assert its bargaining rights and nothing further occurred at that time.
6. In January 1972 Busy B ceased its operations because of the financial losses that it was suffering at that location and it advertised the premises for rent.
7. In the summer of 1972 officials of Zehrs discussed the possibility of opening a Zehrs location at the premises which had formerly been occupied by Busy B. Those officials asserted that Zehrs operated independently with complete management discretion as to whether and where stores would be operated, and that the decision to operate the Zehrs store at 101 King Street South, Waterloo, was independently arrived at within the Zehrs corporate structure and was not a decision imposed by the "Weston Connections". While Zehrs asserts an independent operational function it is clear that financially it is bound to the "Weston Group" of businesses.

8. It appears that Zehrs and Busy B reached an oral agreement that Zehrs would take over the premises. In connection therewith an assignment of lease was arranged and when Zehrs took over the premises it found certain assets on the premises which were valued at approximately \$40,000.00. These assets comprised certain fixtures and equipment which were affixed to the premises. However, Zehrs did spend considerable funds of its own on refurbishing the premises. It opened the business on November 1, 1972, after substantial renovations had been made.

9. There is additional evidence that maintenance employees of Zehrs had serviced the Busy B store when it was operating under a separate contractual arrangement.

10. In order to decide this case it is necessary to consider section 55 of The Labour Relations Act and to determine whether there has been a sale of a business within the meaning of the Act. That section provides as follows:

55.-(1) In this section,

- (a) "business" includes a part or parts thereof;
- (b) "sells" includes leases, transfers and any other manner of disposition, and "sold" and "sale" have corresponding meanings.

(2) Where an employer who is bound by or is a party to a collective agreement with a trade union or council of trade unions sells his business, the person to whom the business has been sold is, until the Board otherwise declares, bound by the collective agreement as if he had been a party thereto and, where an employer sells his business while an application for certification or termination of bargaining rights to which he is a party is before the Board, the person to whom the business has been sold is, until the Board otherwise declares, the employer for the purposes of the application as if he were named as the employer in the application.

(3) Where an employer on behalf of whose employees a trade union or council

of trade unions, as the case may be, has been certified as bargaining agent or has given or is entitled to give notice under section 13, sells his business, the trade union or council of trade unions continues, until the Board otherwise declares, to be the bargaining agent for the employees of the person to whom the business was sold in the like bargaining unit in that business, and the trade union or council of trade unions is entitled to give to the person to whom the business was sold a written notice of its desire to bargain with a view to making a collective agreement and such notice has the same effect as a notice under section 13.

11. In construing the Act it must be remembered the purposes for which section 55 was enacted. The object of the Act is to provide that successor rights of a union be continued where a business or part thereof is sold. The section is intended to maintain the representation of employees by a trade union where those employees have indicated a desire to be represented by a trade union, or where they are, in fact, represented by a trade union and have certain employment rights under a collective agreement. The preservation of those rights is of primary importance in interpreting section 55, and it is in the light of that purpose that the section must be construed.

12. The Board does not look at the matter as if it was strictly a commercial transaction, but the Board in past cases has assessed all the circumstances of the alleged sale in the light of the purpose of the Act, and as a result the Board has gone beyond mere paper transactions where it has been necessary and also has pierced the corporate veil where that has been necessary, to ensure that the purpose of the legislation is maintained.

13. Thus, where there is a relationship between the vendor and purchaser company which includes a corporate relationship or a family relationship, a reading of the Board's cases indicates that on the slightest evidence that there has been some form of transaction between the vendor and the purchaser, a presumption will arise in favour of the applicant trade union that a sale has taken place, and the onus is then cast on the vendor and purchaser companies to rebut that presumption; see e.g. Kem's Masonry (1964) OLRB M.R. December 470; Supercity Discount Foods Ltd. (1969) OLRB M.R. August 666; Aircraft Metal Specialties Ltd. (1970) OLRB Rep. 702; Supercity Discount Foods Limited (1970) OLRB Rep. 118; Woodway Structural Components (1971) OLRB Rep. 545; Dellelce Construction and Equipment and Dell Construction (1972) OLRB Rep. 60; Thorco Manufacturing Ltd. 65 CLLC ¶16,052.

14. In this case because of the nature of the business and because of the relationship between Busy B and Zehrs, and after considering both the assignment of lease and the transfer of some assets, we determine that the onus of showing that there has not been a sale of business rests on the respondents, Zehrs and Busy B.

15. Counsel for the applicants submits that in the retail food industry where there has been a transfer of premises between the vendor and purchaser that this Board has found that the transfer of location per se constitutes is no transfer of goodwill or that there is not a restrictive covenant.

16. We are in agreement with that submission to the extent that we agree that it is not necessary that there be a transfer of goodwill or that there be a restrictive covenant in order to find that there has been a sale of the business. We do agree location is a significant factor in the retail food industry, where the location per se may be a most important asset to be transferred. However, the total transaction and the total circumstances of each case must also be considered. Generally, some consideration must be given as to whether there has been a transfer of assets or whether there is a transfer of sufficient of the enterprise to constitute a sale of business. Another factor in determining that a sale has taken place is whether personnel have been transferred, either managerial personnel or employees. It is obvious that in those cases where employees have been transferred that there is some form of business continuation between the predecessor and successor business. A recognition of that factor carries with it the peril that a predecessor seeking to rid himself of a union may not hire the employees of the vendor in order to rid himself of the suggestion that there is a sale. But, while the continuation of employees is one factor indicating a sale of a business, we do not accept the converse of that proposition, that is, that the refusal to continue employment in the predecessor negates the fact of a sale. Thus, the absence of continued employment in a predecessor company will not negate a sale and in those cases all of the evidence and the circumstances will be considered.

17. In summary the Act contemplates some type of continuum of the business or enterprise either in whole or in part which requires the complete transaction and circumstances to be considered, and where there is some continuum of the business the Board will usually find that a sale has taken place. That proposition is based on a bona fide transaction; however, cases where there is an attempt to get rid of the union will be considered on a different basis; see Aircraft Metal Specialties Ltd., supra.

18. Considering the transaction in this case in the light of the decided cases, it is apparent that there is no continuum of the enterprise as is suggested in the cases referred to by the union in argument. While there is a corporate relationship between the vendor and the

purchaser, we are satisfied that there is sufficient independence in the purchaser to constitute it a separate entity for the purpose of this transaction.

19. We are faced with some evidence of an admission by an officer of Loblaw Groceterias Co., Limited that there was some overall scheme to transfer the premises from Busy B to Zehrs. However, that officer was not called and when that evidence is pitted against the direct evidence of the Zehrs management who testified under oath that Zehrs operated on an independent basis, we are compelled to accept the independence of the transaction.

20. Also, the Busy B operation had been closed down for approximately 6 or 7 months at the time that the transaction took place. It had effectively ceased its operations to the point where a finding cannot be made that there is some form of continuation of the business. We do agree that a time lag between the opening and closing of a business does not of itself preclude a finding that there has been a continuation of the business. Thus, in certain instances even though one business has closed and another reopened after an interval, factors such as business location which may continue the goodwill or the transfer of personal assets may establish some form of continuity to enable a finding that there has been a sale under the Act. For example, in Leader's Clover Farms Food Market (1966) OLRB M.R. November 636, Steinberg operated a business until March 20, 1965, and the purchaser opened on April 7, 1965. An agreement had been entered into between the vendor and purchaser on January 25, 1965 prior to the closing of the vendor operation. Notwithstanding the gap in operations between the closing and reopening there was sufficient evidence to enable the Board to find that there had been a sale of business.

21. Again, in Supercity Discount Foods Limited (1970) supra, where the vendor ceased operations on June 9, 1969, and where, significantly, employees of the vendor were hired into the purchaser company, the Board found that there had been a sale of business. In Red Lion Inn (London) Limited (1969) OLRB M.R. February 1211, the union had bargaining rights for a hotel in London, and in November 1967 the Liquor Control Board suspended the hotel's licence and the hotel immediately ceased to operate its beverage room and cocktail lounge, although it did continue to rent rooms. In May of 1968 there was a transfer of shares contingent upon new owners acquiring the suspended L.C.B.O. licence. The new principals of the company made extensive renovations including the dining lounge. In September of 1968 there was a further transaction between the limited companies and there was a relationship between the two companies. The Liquor Control Board granted permission to the predecessor company to operate beverage facilities and those facilities opened in November 1968 and employed some 25 to 30 employees, none of whom had been formerly employed by the vendor company. Notwithstanding the lapse of time between the closing and reopening of the beverage and lounge

facilities, the Board considered all the circumstances and the nature of the transaction and determined that there was a sale of business.

22. However, in this case the premises had been closed for a lengthy period of time and signs had been placed on the premises advertising that it was for rent. This would indicate to habitual and prospective consumers not only that Busy B had gone out of business, but also that any other interested third party willing to take possession of the premises would be free to operate a business other than a retail food business at that location. Thus, the signs on the premises together with the lapse of time between the closing of Busy B and the opening of Zehrs indicate a sufficient termination of operations, that little, if any, goodwill arising from the location would accrue. While location per se is a significant factor in the retail food industry, because of the consumer habit of attending at a particular locale, the facts in this case are such that any benefit derived from local per se had been dissipated.

23. Accordingly, we determine that the assignment of lease and the transfer of the assets in this case does not constitute a sale of business in the sense that there has not been a continuum of the business or the enterprise within the meaning of the Act. The application is dismissed.

DECISION OF J.E.C. ROBINSON, Q.C.: May 29, 1974.

1. I am in agreement with the decision of my colleagues that on the facts of this case the application must be dismissed.

2. Having agreed with the ultimate conclusion, however, I must record that I am not in agreement with much of the obiter contained in the decision, and to that extent, I express my non-concurrence.

5114-73-R: Canadian Union of Public Employees (Applicant) v. THE BOARD OF EDUCATION FOR THE BOROUGH OF SCARBOROUGH (Respondent).

BEFORE: D. H. Kates, Vice-Chairman, and Board Members A. Main and F. W. Murray.

APPEARANCES AT THE HEARING: R. Chisholm for the applicant; B. W. Earle and R. A. Mitchell for the respondent.

DECISION OF THE BOARD: May 30, 1974.

1. The Board finds that the applicant is a trade union within the meaning of section 1(1)(n) of The Labour Relations Act.

2. Having regard to the agreement of the parties, the Board further finds that all employees of the respondent regularly employed for not more than twenty-four hours per week and students employed during the school vacation period, save and except foremen and supervisors, those above the rank of foreman and supervisor, office, clerical and technical staff, and all employees covered under subsisting collective agreements, constitute a unit of employees of the respondent appropriate for collective bargaining.

3. For purposes of clarity, the Board notes that the employees affected by the instant application pertain to persons employed in the operations and maintenance divisions of the respondent's plant operations.

4. An issue arose during the course of these proceedings as to whether 21 students employed by the respondent in its school cleaning programme ought to be included in the appropriate unit. The respondent argued that these students are employed as part of an incentive programme to promote scholastic achievement by encouraging students to remain in school where they would otherwise "drop out" and seek permanent employment. It appears that continued participation in the programme is dependent upon the maintenance of acceptable grades by the student. Students in the programme normally work approximately 4 hours a day five days a week. They perform caretaking and cleaning duties that would otherwise be performed by the caretaking staff. Indeed the evidence indicates that a request was made by the school principals to the Plant Department Administration that the student programme be considered when reviewing the caretaking staffing plan. The students are paid out of a budget set aside for the programme and are answerable to the principal with respect to the quality of the work performed.

5. The respondent urges the Board to exclude from the bargaining unit students who are engaged on the programme because they do not share a community of interest with regular part time employees and students engaged during the school vacation period. The Board in rejecting this submission cites the following factors in support of the finding that they are members of the appropriate bargaining unit;

- 1) the students engaged in the special programme are employees of the respondent board;
- 2) they are regularly employed for not more than twenty-four hours per week and,
- 3) they perform caretaking and cleaning functions and as such would share a community of interest with regular part-time cleaning and caretaking staff.

6. The Board is of the view that there is nothing in the Labour Relations Act to deprive employees included in the said special programme of representation for collective bargaining purposes. To accede to the argument made by the respondent would cause the Board to condone unduly the fragmentation of bargaining units. We are equally of the view that the concern of maintaining the special programme is an issue that could be more appropriately dealt with through the negotiating process.

7. The Board is satisfied on the basis of all the evidence before it that not less than thirty-five per cent of the employees of the respondent in the bargaining unit, at the time the application was made, were members of the applicant on February 7, 1974, the terminal date fixed for this application and the date which the Board determines under section 92(2)(j) of The Labour Relations Act to be the time for the purpose of ascertaining membership under section 7(1) of the said Act.

8. A representation vote will be taken of the employees of the respondent in the bargaining unit. All employees of the respondent in the bargaining unit on the date hereof who do not voluntarily terminate their employment or who are not discharged for cause between the date hereof and the date the vote is taken will be eligible to vote.

9. Voters will be asked to indicate whether or not they wish to be represented by the applicant in their employment relations with the respondent.

10. The matter is referred to the Registrar.

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Unit: "all employees of the respondent, save and except roads superintendent, those above the rank of roads superintendent, office, clerical and technical staff."

Number of names of persons on voters' list		19
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APPLICATIONS FOR DETERMINATION UNDER SECTION 95(2) DISPOSED OF DURING

APRIL

4442-73-M: Metropolitan Separate School Board (Applicant) v. Canadian Union of Public Employees and its Local 1328 (Respondent). (AFFIRMATIVE).

(1974) 2 OLRB M.R. - PAGE 220.

4735-73-M: United Steelworkers of America (Applicant) v. The W. S. Tyler Company of Canada Limited (Respondent). (TERMINATED).

5109-73-M: Canadian Union of Public Employees and its Local 1106 (Applicant) v. The Queensway General Hospital (Respondent). (DISMISSED).

5268-73-M: Toronto Newspaper Guild, Local 87 (Applicant) v. Preston and Sons Limited, Brantford, (The Brantford Expositor) (Respondent). (DISMISSED).

5346-73-M: Canadian Union of Public Employees (Trade Union) v. The Corporation of the City of Thunder Bay (Employer). (WITHDRAWN).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

5324-73-R: Canadian Union of Public Employees (Applicant) v. Welland & District Humane Society S.P.C.A. (Respondent). (REQUEST DENIED).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 79

4812-73-U: John Budd (Complainant) v. United Paperworkers International Union Local 646 and Kruger Pulp and Paper Co. Limited (Packaging Div.) Rexdale (Respondents). (REQUEST DENIED).

5213-73-U: Parviz Khatib-Zanjani (Complainant) v. Jacob & Thompson Limited (Respondent). (REQUEST DENIED).

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD
DURING MAY 1974

BARGAINING AGENTS CERTIFIED DURING MAY

No Vote Conducted

2138-72-R: The Ontario Erectors Association (Applicant) v. The International Association of Bridge, Structural and Ornamental Ironworkers, Local Union 700 (Respondent) v. Electrical Power Systems Construction Association (Intervener #1) v. Hydro-Electric Power Commission of Ontario (Intervener #2) v. Labourers' International Union of North America, Ontario Provincial District Council et al (Intervener #3) v. Erectors Division, Ontario Precast Concrete Manufacturers' Association (Intervener #4).

Unit: "all employers of ironworkers for whom the respondent has bargaining rights in the Counties of Elgin, Essex, Kent, Lambton and Middlesex in the industrial, commercial and institutional and heavy engineering sector of the construction industry." (no employees in the unit). (FOR THE PURPOSES OF CLARITY THE BOARD FURTHER NOTED THAT THE TERM IRONWORKERS DOES NOT INCLUDE RODMEN.).

2140-72-R: The Ontario Erectors Association (Applicant) v. The International Association of Bridge, Structural and Ornamental Ironworkers, Local Union 736 (Respondent) v. Electrical Power Systems Construction Association (Intervener #1) v. Hydro-Electric Power Commission of Ontario (Intervener #2) v. Labourers' International Union of North America, Ontario Provincial District Council et al (Intervener #3) v. Erectors Division, Ontario Precast Concrete Manufacturers' Association (Intervener #4).

Unit: "all employers of ironworkers for whom the respondent has bargaining rights in the Counties of Brant, Bruce, Gray, Haldimand, Huron, Lincoln, Norfolk, Oxford, Perth, Waterloo, Welland, Wellington, and Westworth, and all of the County of Halton - except for the premises of the Ford Motor Company in the industrial, commercial and institutional and heavy engineering sector of the construction industry." (no employees in the unit). (FOR THE PURPOSES OF CLARITY THE BOARD FURTHER NOTED THAT THE TERM IRONWORKERS DOES NOT INCLUDE RODMEN.).

2866-72-R: Kitchener-Waterloo Construction Association (Applicant) v. The Grand River Valley District Council of the United Brotherhood of Carpenters and Joiners of America on behalf of Local Unions 498, 949, 1940 and 2173 (Respondent) v. Electrical Power Systems Construction Association (Intervener).

Unit: "all employers of carpenters and carpenters' apprentices for whom the respondent has bargaining rights in the Counties of Waterloo, Wellington, Dufferin, Grey, Brant and Norfolk in the industrial, commercial and institutional sector of the construction industry." (no employees in the unit). (HAVING CONSIDERED THE REPRESENTATIONS OF THE PARTIES).

4205-73-R: Association of Commercial and Technical Employees, Local 1704, C.L.C. (Applicant) v. Comtech Group Limited (Respondent) v. Group of Employees (Objectors).

Unit #1: "all office, clerical and technical employees of the respondent in Metropolitan Toronto, save and except supervisors, persons above the rank of supervisor, salesmen, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (15 employees in the unit).

Unit #2: "all office, clerical and technical employees of the respondent in Metropolitan Toronto regularly employed for not more than 24 hours per week and students employed during the school vacation period." (10 employees in the unit).

(1974) 2 OLRB M.R. - PAGE 291.

4554-73-R: United Brotherhood of Carpenters and Joiners of America, Local Union 1669 (Applicant) v. Roy Construction (North Bay) Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all carpenters, carpenters' apprentices and construction labourers in the employ of the respondent within a radius of twenty miles of the Kapuskasing post office, save and except non-working foremen and persons above the rank of non-working foreman." (7 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

4990-73-R: Labourers' International Union of North America, Local 183 (Applicant) v. Arsandco Investments Limited (Respondent) v. International Association of Bridge, Structural & Ornamental Iron Workers, Local 721 (Intervener).

Unit: "all construction labourers in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, The Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, employed on residential construction, save and except construction labourers employed as helpers of bricklayers and plasterers, non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit).

4998-73-R: Labourers' International Union of North America, Local 183 (Applicant) v. A. R. G. Contracting Company Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent engaged in the concrete forming on residential building projects in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (25 employees in the unit). (HAVING REGARD TO THE EVIDENCE BEFORE THE BOARD, TO THE AGREEMENT OF THE PARTIES).

5394-73-R: Service Employees Union, Local 204, Affiliated with the S.E.I.U., A.F. of L., C.I.O., C.L.C. (Applicant) v. The Baycrest Hospital and/or Jewish Home for the Aged (Respondent).

Unit: "all charge registered nursing assistants employed by the respondent at The Baycrest Hospital and/or Jewish Home for the Aged in Metropolitan Toronto engaged in a nursing capacity, save and except charge nurses, persons above the rank of charge nurse, instructors persons employed for not more than 24 hours per week, students employed during the school vacation period and persons covered by the subsisting collective agreement." (74 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5412-73-R: The Civil Service Association of Ontario (Inc.) (Applicant) v. The Metropolitan General Hospital (Respondent).

Unit: "all ambulance dispatchers in the employ of the respondent in Windsor, save and except supervisors and persons above the rank of supervisor." (6 employees in the unit). (HAVING REGARD TO THE CIRCUMSTANCES OF THIS APPLICATION).

5416-73-R: Retail, Wholesale and Department Store Union, AFL:CIO:CLC (Applicant) v. Sudbury Photo Service Limited (Respondent).

Unit #1: "all office and clerical employees of the respondent at Sudbury, save and except the president and persons regularly employed for not more than 24 hours per week." (3 employees in the unit).

(BARGAINING UNIT #2 - SEE APPLICATION CERTIFIED SUBSEQUENT TO POST-HEARING VOTE).

5417-73-R: Canadian Union of Public Employees (Applicant) v. The Corporation of the Township of Woolwich (Respondent).

Unit: "all employees of the respondent at Woolwich, save and except foremen, persons above the rank of foreman, office staff, persons

regularly employed for not more than 24 hours per week and students employed during the school vacation period." (11 employees in the unit).

5419-73-R: Canadian Union of Public Employees (Applicant) v. The Corporation of the City of Pembroke (Respondent).

Unit: "all office, clerical and technical employees of the respondent, save and except the Deputy City Clerk and Assistant Public Works Superintendent and those above the rank of Deputy City Clerk, and Assistant Public Works Superintendent, Chief Waterworks Pump House Operator, Chief Pollution Control Plant Operator, Arena Manager, Swimming Pool Manager, Secretaries to the City Clerk, Mayor and Development Commissioner and City Engineer; persons regularly employed for not more than 24 hours per week, students employed during the school vacation period and persons covered by the subsisting collective agreement between the respondent and the Canadian Union of Public Employees Local 24." (40 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (THE BOARD NOTED THE AGREEMENT OF THE PARTIES: (I) THAT THE PERSONS IN THE CLASSIFICATIONS OF ARENA MANAGER, ASSISTANT PUBLIC WORKS SUPERINTENDENT, SWIMMING POOL MANAGER, CHIEF WATERWORKS PUMP HOUSE OPERATOR, CHIEF POLLUTION CONTROL PLANT OPERATOR AND DIRECTOR OF SOCIAL SERVICES EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ACCORDINGLY ARE NOT INCLUDED IN THE BARGAINING UNIT. (II) THAT THE PERSONS IN THE CLASSIFICATIONS OF, BUILDING INSPECTOR, ASSISTANT TAX COLLECTOR AND SECRETARY TO THE DIRECTOR OF PARKS, RECREATION AND COMMUNITY SERVICES, DO NOT EXERCISE MANAGERIAL FUNCTIONS NOR ARE THEY EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ACCORDINGLY ARE INCLUDED IN THE BARGAINING UNIT. (III) THAT THE PERSON IN THE CLASSIFICATION OF SECRETARY TO THE CITY ENGINEER IS EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ACCORDINGLY IS NOT INCLUDED IN THE BARGAINING UNIT.).

5432-73-R: Canadian Union of Public Employees (Applicant) v. The Middlesex County Board of Education (Respondent).

Unit: "all office and clerical employees of the respondent in the County of Middlesex, save and except supervisors, persons above the rank of supervisor, records clerk, psychologists, attendance counsellors, secretaries to: the Director of Education and Secretary-Treasurer; the Superintendent of Business; the Superintendent of Instruction; the Superintendent of Development and Special Education, persons covered by a subsisting collective agreement between the Middlesex County Board of Education and the Canadian Union of Public Employees and its Local No. 1170 and teachers as defined in the Teaching Profession

Act." (89 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR THE PURPOSE OF CLARITY, THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT PERSONS OCCUPYING THE FOLLOWING CLASSIFICATIONS ARE EXCLUDED FROM THE BARGAINING UNIT AS BEING SUPERVISORS OR ABOVE THE RANK OF SUPERVISOR: ACCOUNTANT; EXECUTIVE SECRETARY TO DIRECTOR OF EDUCATION; SUPERVISOR OF PLANT OPERATIONS; ASSISTANT SUPERVISOR OF PLANT OPERATIONS; SUPERVISOR OF CUSTODIANS; PURCHASING AGENT; TRANSPORTATION MANAGER; PAYROLL SUPERVISOR.).

5446-74-R: Ontario Nurses' Association (Applicant) v. The Hospital Commission Sarnia General Hospital (Respondent).

Unit #1: "all registered and graduate nurses engaged in a nursing capacity employed by the respondent at its Sarnia General Hospital, at Sarnia, save and except head nurses, persons above the rank of head nurse, Registered Nurse Pharmacy, Employee Health Nurse, and persons regularly employed for not more than twenty-four hours per week." (71 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(BARGAINING UNIT #2 - SEE APPLICATION CERTIFIED SUBSEQUENT TO POST-HEARING VOTE.).

5453-74-R: Canadian Union of Operating Engineers (Applicant) v. Olympia and York Developments Limited (Respondent).

Unit: "all employees of the respondent employed at 703 Don Mills Road and 10 Gateway Boulevard (Gateway Building), at Metropolitan Toronto, save and except Superintendents, persons above the rank of Superintendent, office and sales staff and persons regularly employed for not more than twenty-four hours per week." (6 employees in the unit). (HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES).

5467-74-R: United Cement, Lime and Gypsum Workers International Union, A.F.L. C.I.O. C.L.C. (Applicant) v. Standard Machine & Equipment Co. & Associates (Respondent).

Unit: "all employees of the respondent in the Township of Thurlow, save and except foremen, persons above the rank of foreman, office staff, and store clerks." (13 employees in the unit).

5473-74-R: Service Employees Union Local 268 (Applicant) v. Nipigon District Memorial Hospital (Respondent).

Unit: "all office and clerical employees of the respondent in its hospital at Nipigon, save and except supervisors, persons above the rank of supervisor, professional medical staff, graduate nursing staff, undergraduate nurses, graduate pharmacists, undergraduate pharmacists, graduate dietitians, student dietitians, confidential

secretary to the administrator clerk, technical personnel, persons regularly employed for not more than 24 hours per week, students employed during the school vacation period, and persons covered by a subsisting collective agreement." (4 employees in the unit). (FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT THE TERM TECHNICAL PERSONNEL COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS.).

5484-74-R: United Brotherhood of Carpenters and Joiners of America, Local Union 93 (Applicant) v. Mart Builders Ltd. (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the Regional Municipality of Ottawa - Carleton and the United Counties of Prescott and Russell, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

5497-74-R: United Brotherhood of Carpenters and Joiners of America, Local Union 93 (Applicant) v. Les Constructions Ltee Demco Construction Ltd. (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the Regional Municipality of Ottawa - Carleton and the United Counties of Prescott and Russell, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

5499-74-R: Service Employees Union, Local 204, Affiliated with A.F. of L., C.I.O. C.L.C. (Applicant) v. Collingwood General Marine Hospital (Respondent) v. The Civil Service Association of Ontario (Inc.) (Intervener).

Unit: "all clerical employees of the respondent at Collingwood, Ontario, save and except the Secretary to the Administrator, the Secretary to the Director of Nursing Services, persons above the rank of Secretary to the Administrator and Secretary to the Director of Nursing Services, persons regularly employed for not more than 24 hours per week and persons covered by subsisting collective agreements." (22 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5508-74-R: International Union of Operating Engineers, Local 793 (Applicant) v. Township of Kinloss (Respondent).

Unit: "all employees of the respondent, save and except foremen, persons above the rank of foreman, and office staff." (2 employees in the unit).

5511-74-R: Oil, Chemical & Atomic Workers International Union (Applicant) v. Texas Refining Corp. of Canada Limited (Respondent).

Unit #1: "all employees of the respondent in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (7 employees in the unit).

Unit #2: "all employees of the respondent in Metropolitan Toronto regularly employed for not more than 24 hours per week and students employed during the school vacation period, save and except foremen, persons above the rank of foreman, and office staff." (2 employees in the unit).

5526-74-R: Ontario Nurses' Association (Applicant) v. Dryden District General Hospital (Respondent).

Unit: "all registered and graduate nurses employed by the respondent at Dryden, save and except supervisors and persons above the rank of supervisor." (47 employees in the unit).

5530-74-R: Wood, Wire & Metal Lathers International Union Local 562 (Applicant) v. T. F. Marshall (Respondent).

Unit: "all lathers and lathers' apprentices in the employ of the respondent in the County of Wentworth including part of Township of North Dumfries annexed from Beverly Township and the Township of Nassagaweya and the Town of Burlington in the County of Halton, save and except non-working foremen and persons above the rank of non-working foreman." (12 employees in the unit).

5531-74-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. William Clark Applications (Respondent).

Unit: "all carpenters, carpenters' apprentices and construction Labourers in the employ of the respondent in the District of Kenora, including the Patricia Portion, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit). (HAVING REGARD TO THE FOREGOING).

5537-74-R: Local Union 1190, United Brotherhood of Carpenters and Joiners of America (Applicant) v. V. & S. Carpenter (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen

and persons above the rank of non-working foreman." (9 employees in the unit).

5538-74-R: Local Union 1190, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Pileggi Bros. Carpentry Contractors (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (7 employees in the unit).

5541-74-R: Kingston Typographical Union, No. 204 (Applicant) v. The Kingston Whig-Standard Company Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at Kingston and at the District Bureaus at Brockville, Gananoque, Napanee and Picton employed in news and editorial related work, save and except publisher, editor-in-chief, private secretary to the publisher, private secretary to the editor-in-chief, managing editor, city editor, sports editor, editorial page editor, district editor, life styles editor, picture editor, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (35 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5559-74-R: Labourers' International Union of North America, Local 183 (Applicant) v. Man-Co Construction Ltd. (Respondent).

Unit: "all construction labourers in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except construction labourers employed on building projects, non-working foremen and persons above the rank of non-working foreman." (6 employees in the unit).

5563-74-R: Local Union 1190, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Rocket Carpentry Contractor (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (8 employees in the unit).

5564-74-R: Local Union 1190, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Jo Jo Carpentry (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (6 employees in the unit).

5565-74-R: Retail Clerks Union, Local 486 (Applicant) v. Lords Super Value Pharmacy Limited (Respondent).

Unit: "all employees of Lords Super Value Pharmacy Limited at Cornwall, Ontario, save and except the Store Manager and persons above the rank of Store Manager." (5 employees in the unit).

5566-74-R: Office and Professional Employees International Union Local 343 (Applicant) v. The Ontario English Catholic Teachers' Association (Respondent).

Unit: "all office and clerical employees of the respondent in the Municipality of Metropolitan Toronto, save and except supervisors and persons above the rank of supervisor." (12 employees in the unit).

5567-74-R: Labourers' International Union of North America, Local 183 (Applicant) v. Opaloka Development Ltd. (Respondent).

Unit: "all construction labourers in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except construction labourers employed on building projects, non-working foremen and persons employed on building projects, non-working foremen and persons above the rank of non-working foreman." (6 employees in the unit).

5568-74-R: Service Employees Union Local 268 (Applicant) v. Tendercare Nursing Home (Respondent).

Unit: "all employees of the respondent at Sault Ste. Marie, save and except professional medical staff, graduate nursing staff, undergraduate nurses, graduate pharmacists, graduate dietitians, student dietitians, technical personnel, supervisors, foremen, persons above the rank of supervisor or foreman, office staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (6 employees in the unit). (FOR THE PURPOSES

OF CLARITY, THE BOARD DECLARED THAT THE TERM TECHNICAL PERSONNEL COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS.).

5569-74-R: Local Union 1190, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Joseph Schmidt Carpentry Limited (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (24 employees in the unit).

5570-74-R: The Civil Service Association of Ontario (Inc.) (Applicant) v. City Ambulance Service of Quinte Ltd. (Respondent).

Unit: "all employees of the respondent at Belleville, Madoc and Napanee employed in the ambulance service operations, save and except supervisors, persons above the rank of supervisor, office staff, and persons regularly employed for not more than 24 hours per week." (19 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5571-74-R: Local Union 1678 of the International Brotherhood of Electrical Workers, AFL-CIO-CLC (Applicant) v. Gananoque Electric Light & Water Supply Company Limited (Respondent).

Unit: "all employees of the respondent at Gananoque, save and except foremen, persons above the rank of foreman, office staff, sales staff, students employed during the school vacation period and persons regularly employed for not more than twenty-four hours per week." (21 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5572-74-R: Canadian Union of Public Employees (Applicant) v. Northumberland County (Respondent).

Unit: "all employees of the respondent at its Golden Plough Lodge at Cobourg, Ontario, save and except supervisors, persons above the rank of supervisor, administrator, secretary to the administrator, professional and medical staff, graduate and under-graduate nurses, housekeepers, persons employed for not more than twenty four hours per week and students employed during the school vacation period." (66 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (IN VIEW OF THE AGREEMENT OF THE PARTIES ON ALL MATTERS BEFORE THE EXAMINER, THE BOARD NOTED THE AGREEMENT OF THE PARTIES TO WAIVE A FORMAL EXAMINER'S REPORT.).

5573-74-R: Teamsters Local 879 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Hamilton Credit Exchange Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all office and clerical employees of the respondent at Hamilton, save and except Department Supervisors, persons above the rank of Department Supervisor, and persons regularly employed for not more than twenty-four hours per week." (58 employees in the unit).
(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5578-74-R: Warehousemen and Miscellaneous Drivers, Local 419 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Skrow's Produce (1971) Limited (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto save and except foremen, persons above the rank of foreman, office and sales staff, and students employed during the school vacation period." (10 employees in the unit).

5588-74-R: The Canadian Union of Public Employees (Applicant) v. The Peterborough-Victoria-Northumberland and Newcastle Roman Catholic Separate School Board (Respondent).

Unit: "all employees of the respondent engaged in maintenance, services and plant operations, save and except the Supervisor of Plant Maintenance persons above the rank of Supervisor of Plant Maintenance, persons regularly employed for not more than 24 hours per week, students employed during the school vacation period and persons covered by a collective agreement between The Canadian Union of Public Employees and its Local 1453 and the respondent dated September 26, 1974." (26 employees in the unit).

5589-74-R: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW) (Applicant) v. Volvo Canada Ltd. (Respondent).

Unit: "all employees of the respondent at its warehouse in Metropolitan Toronto save and except foremen, persons above the rank of foreman, office and sales staff and students employed during the school vacation period." (8 employees in the unit). (FOR THE PURPOSES OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE ORDER OFFICE SUPERVISOR IS EQUIVALENT IN RANK TO FOREMAN AND IS THEREFORE EXCLUDED FROM THE BAR-GAINING UNIT.).

5596-74-R: Canadian Union of Public Employees (Applicant) v. Cochrane Nursing Home Limited (Respondent).

Unit: "all employees of the respondent at Hearst, save and except professional medical staff, graduate nursing staff, undergraduate nurses, graduate pharmacists, undergraduate pharmacists, graduate dietitians, student dietitians, technical personnel, supervisors, persons above the rank of supervisor, office staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (31 employees in the unit). (THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT CHARGE NURSES ARE EXCLUDED FROM THE BARGAINING UNIT AS HOLDING A POSITION EQUIVALENT TO THE RANK OF SUPERVISOR.).

5610-74-R: The Canadian Union of Public Employees (Applicant) v. CHS Pharmacy Limited (Respondent).

Unit: "all employees of the respondent in Oshawa, save and except graduate pharmacists, administrator, confidential secretary to the administrator, department heads, persons above the rank of department head, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (17 employees in the unit).

5615-74-R: United Rubber, Cork, Linoleum and Plastic Workers of America AFL CIO CLC (Applicant) v. Seiberling Rubber Company of Canada, Limited (Respondent).

Unit: "all employees of the respondent at its Seiberling Service Centre in Metropolitan Toronto, save and except service manager, persons above the rank of service manager, office and sales staff, persons regularly employed for not more than 24 hours per week, and students employed during the school vacation period." (6 employees in the unit).

5620-74-R: United Steelworkers of America (Applicant) v. Nordal Steel Building Systems Limited (Respondent).

Unit: "all employees of the respondent working in and out of Sudbury, save and except foremen, persons above the rank of foreman, office and sales staff, and students employed during the school vacation period." (2 employees in the unit).

5621-74-R: United Steelworkers of America (Applicant) v. Telso Products Limited (Respondent).

Unit: "all employees of the respondent at Tilbury, save and except foremen, persons above the rank of foreman, office and sales staff, and students employed during the school vacation period." (49 employees in the unit).

5624-74-R: Service Employees Union - Local 478 Affiliated with AFL - CIO - CLC (Applicant) v. Leisure World Nursing Homes Limited (Respondent).

Unit: "all employees of the respondent at North Bay, save and except professional nursing staff, physiotherapists, occupational therapists, supervisors, foremen, persons above the rank of supervisor or foreman, office staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (58 employees in the unit).

5632-74-R: Local Union 1190, United Brotherhood of Carpenters and Joiners of America (Applicant) v. G D D Carpenters (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (7 employees in the unit).

5633-74-R: Local Union 1190, United Brotherhood of Carpenters and Joiners of America (Applicant) v. S G R Construction Ltd. (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (11 employees in the unit).

5641-74-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. G. C. Rentals and Enterprises Ltd. (Respondent).

Unit: "all millwrights and millwrights' apprentices in the employ of the respondent in the District of Thunder Bay, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

5642-74-R: The Civil Service Association of Ontario (Inc.) (Applicant) v. LaSalle Ambulance Service (Respondent).

Unit: "all employees of the respondent at Belleville, save and except senior attendant, persons above the rank of senior attendant, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (8 employees in the unit).

5644-74-R: International Union of Operating Engineers, Local 793 (Applicant) v. Bot Construction Ltd. (Respondent).

Unit: "all employees of the respondent in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

5645-74-R: United Brotherhood of Carpenters and Joiners of America Local Union 1946 (Applicant) v. Talbot Square Ltd. (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

5647-74-R: International Union of Operating Engineers, Local 793 (Applicant) v. Alnor Earthmoving Limited (Respondent).

Unit: "all employees of the respondent in the Regional Municipality of Niagara and the County of Haldimand, engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit).

5657-74-R: Local Union 1190, United Brotherhood of Carpenters and Joiners of America (Applicant) v. V & V Construction Ltd. (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit).

5659-74-R: International Association of Bridge, Structural and Ornamental Iron Workers - Local Union #700 (Applicant) v. Arlo Metal Enterprises (Respondent).

Unit: "all ironworkers in the employ of the respondent in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, save and except non-working foremen and persons above the rank of non-working foreman." (7 employees in the unit).

5660-74-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. O S F Industries Limited (Respondent).

Unit: "all carpenters, carpenters' apprentices and construction labourers in the employ of the respondent in the District of Kenora, including the Patricia Portion, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit). (HAVING REGARD TO THE FOREGOING).

5665-74-R: Retail Clerks Union, Local 486 (Applicant) v. Great Universal Stores of Canada Limited (Respondent).

Unit: "all employees of the respondent at Hawkesbury, save and except store manager, persons above the rank of store manager, and office staff." (6 employees in the unit).

5670-74-R: Laborers International Union of North America, Local 607 (Applicant) v. Sillman Company (Northern) Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent in that portion of the District of Cochrane north of the 50th parallel of latitude, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

5679-74-R: United Brotherhood of Carpenters and Joiners of America, Local Union 446 (Applicant) v. C. A. Pitts Engineering Construction Limited (Respondent) v. Labourer's International Union of North America, Local 1036 (Intervener).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in that portion of the District of Algoma south of the 49th parallel of latitude, save and except non-working foremen and persons above the rank of non-working foreman." (15 employees in the unit).

5680-74-R: Christian Labour Association of Canada (Applicant) v. Maple Engineering & Construction Company Limited (Respondent).

Unit: "all carpenters, carpenters' apprentices and construction labourers in the employ of the respondent in the Regional Municipality of Waterloo except part of Beverly Township annexed by North Dumfries Township, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit). (HAVING REGARD TO THE FOREGOING).

5699-74-R: Laborers International Union of North America, Local 749 (Applicant) v. Newman Bros Ltd. (Respondent).

Unit: "all construction labourers in the employ of the respondent in the Counties of Essex and Kent, save and except non-working foremen

and persons above the rank of non-working foreman." (2 employees in the unit).

5701-74-R: Local Union 1190, United Brotherhood of Carpenters and Joiners of America (Applicant) v. M.D.D. Construction Company (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (12 employees in the unit).

5702-74-R: Local Union 1190, United Brotherhood of Carpenters and Joiners of America (Applicant) v. L.L. Contractor (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (12 employees in the unit).

5703-74-R: Local Union 1190, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Zanchetta Carpentry (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit).

5704-74-R: Grand River Valley District Council of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. Mollenhauer Limited (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the Counties of Brant and Norfolk, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit).

5709-74-R: Labourers' International Union of North America, Local 183 (Applicant) v. Dante & Roberts General Contractors (Respondent).

Unit: "all construction labourers in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except construction labourers employed on building projects, non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

5710-74-R: Christian Labour Association of Canada (Applicant) v. Simcoe Mechanical Contracting Limited (Respondent).

Unit: "all plumbers, plumbers' apprentices, steamfitters and steamfitters' apprentices in the employ of the respondent in the Townships of Elizabethtown, Augusta, and Edwardsburgh and all lands south thereof (there are three Municipalities south of these townships: Brockville, Prescott and Cardinal) in the United Counties of Leeds and Grenville, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit). (HAVING REGARD TO THE FOREGOING).

Applications Certified Subsequent to Pre-Hearing Vote

5348-73-R: Service Employees Union, Local 204, Affiliated with Service Employees International Union, AFL-CIO-CLC (Applicant) v. Oakridge Villa Nursing Home (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except Supervisors, persons above the rank of supervisor, registered nurses, office staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (102 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Number of names of persons on revised voters' list		76
Number of persons who cast ballots		72
Ballots segregated and not counted	1	
Number of ballots marked in favour of applicant	59	
Number of ballots marked against applicant	12	

5430-73-R: The Civil Service Association of Ontario (Inc.) (Applicant) v. The Religious Hospitallers of St. Joseph of the Hotel Dieu at Kingston (Respondent).

Unit: "all radiological technicians, cardiology technicians, autopsy technologists and their assistants employed by the respondent in the City of Kingston, Ontario, save and except assistant chief radiological technicians, cardiology charge technicians, radiological clinical instructors and persons above these ranks, and radiological students, office and clerical staff, x-ray aides, morgue attendants, persons regularly employed for not more than twenty-four hours per week, students employed during school vacation periods, and persons covered by existing labour agreements." (16 employees in the unit).

Number of names of persons on voters' list	16
Number of persons who cast ballots	13
Number of ballots marked in favour of applicant	13
Number of ballots marked against applicant	0

5504-74-R: The United Brotherhood of Carpenters and Joiners of America, Local Union 2679 (Applicant) v. Bardeau Furniture Ltd. (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office and sales staff." (22 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Number of names of persons on voters' list	24
Number of persons who cast ballots	19
Number of ballots marked in favour of applicant	17
Number of ballots marked against applicant	2

5525-74-R: Textile Workers Union of America, AFL-CIO-CLC (Applicant) v. Ivers-Lee Company (Canada) Limited (Respondent).

Unit: "all employees of the respondent at its plant in Brampton, Ontario, save and except floorladies and supervisors, persons above the rank of floorlady and supervisor, office and sales staff, persons employed in the Quality Control Department, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (35 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Number of names of persons on voters list		33
Number of persons who cast ballots	33	
Number of ballots marked in favour of applicant	21	
Number of ballots marked against applicant	12	

Applications Certified Subsequent to Post-Hearing Vote

5039-73-R: Christian Labour Association of Canada (Applicant) v. The Canadian Hearing Society (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except the Executive Director, persons above the rank of Executive Director and persons employed for not more than twenty-four hours per week." (29 employees in the unit).

Number of names of persons on voters' list		18
Number of persons who cast ballots	14	
Number of ballots marked in favour of applicant	9	
Number of ballots marked against applicant	5	

5175-73-R: Service Employees Union, Local 204, affiliated with the S.E.I.U., A.F. of L., C.I.O., C.L.C. (Applicant) v. Bestview Holdings Limited, carrying on business as Bestview Nursing Home, Orillia (Respondent).

Unit: "all employees of the respondent at Orillia, who are employed regularly for not more than twenty-four hours per week, save and except professional nursing staff, physiotherapists, occupational therapists, supervisors, persons above the rank of supervisor and students employed during the school vacation period." (26 employees in the unit).

Number of names of persons on voters' list		7
Number of persons who cast ballots	3	
Number of ballots marked in favour of applicant	3	
Number of ballots marked against applicant	0	

5269-73-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. Beaver Lumber Co. Ltd. (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent employed at the Beaver Home Centre in Windsor, save and except assistant supervisor and shipper, persons above the rank of assistant supervisor and shipper, office and sales staff and persons regularly employed for not more than twenty-four hours per week." (19 employees in the unit).

Number of persons on revised voters' list		12
Number of persons who cast ballots	12	
Number of ballots marked in favour of applicant	7	
Number of ballots marked against applicant	5	

5287-73-R: The Canadian Union of Public Employees (Applicant) v. The Essex County Board of Education (Respondent).

Unit: "all office employees of the respondent regularly employed for not more than twenty-four hours per week, save and except supervisors and persons above the rank of supervisor." (26 employees in the unit).

Number of names of persons on voters' list		25
Number of persons who cast ballots	21	
Number of ballots marked in favour of applicant	17	
Number of ballots marked against applicant	4	

5300-73-R: Teamsters Local 879 Affiliated with The International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Mercury Builders' Supplies Ltd. (Respondent).

Unit: "all employees of the respondent at St. Catharines, save and except foremen, persons above the rank of foreman, office and sales staff, persons regularly employed for not more than 24 hours per week, and students employed during the school vacation period." (4 employees in the unit).

Number of names of persons on voters' list		4
Number of persons who cast ballots	4	
Number of ballots marked in favour of applicant	4	
Number of ballots marked against applicant	0	

5372-73-R: The Civil Service Association of Ontario (Inc.) (Applicant)
v. Cooke Ambulance Service (Respondent).

Unit: "all employees of the respondent at Binbrook, save and except supervisors, persons above the rank of supervisor, and office staff."
(6 employees in the unit).

Number of names of persons on voters' list		6
Number of persons who cast ballots	5	
Number of ballots marked in favour of applicant	5	
Number of ballots marked against applicant	0	

5373-73-R: The Civil Service Association of Ontario (Inc.) (Applicant)
v. V. Patton Ambulance Service (Respondent).

Unit: "all employees of the respondent at Waterdown, save and except supervisors, persons above the rank of supervisor, and office staff."
(5 employees in the unit).

Number of names of persons on voters' list		6
Number of persons who cast ballots	5	
Number of ballots marked in favour of applicant	5	
Number of ballots marked against applicant	0	

5383-73-R: Teamsters Local 879, Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Jan Peters Trucking & Excavating Ltd. (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at Kitchener, save and except foremen, persons above the rank of foreman, office and sales staff."
(22 employees in the unit).

Number of names of persons on voters' list		27
Number of persons who cast ballots	24	
Number of ballots marked in favour of applicant	13	
Number of ballots marked against applicant	11	

5416-73-R: Retail, Wholesale and Department Store Union, AFL:CIO:CLC (Applicant) v. Sudbury Photo Service Limited (Respondent).

Unit #2: "all employees of the respondent at Sudbury, save and except foremen, persons above the rank of foreman, outside salesmen, persons regularly employed for not more than 24 hours per week and office and clerical staff." (7 employees in the unit).

Number of names of persons on voters' list		7
Number of persons who cast ballots	6	
Number of ballots marked in favour of applicant	6	
Number of ballots marked against applicant	0	

(BARGAINING UNIT #1 - SEE APPLICATION UNITS CERTIFIED - NO VOTE CONDUCTED).

5437-74-R: International Molders & Allied Workers Union (Applicant) v. Delhi Metal Products Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent employed at Delhi, save and except foremen, persons above the rank of foreman, office and sales staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (191 employees in the unit).

Number of names of persons on revised voters' list		151
Number of persons who cast ballots	139	
Ballots segregated and not counted	1	
Number of ballots marked in favour of applicant	85	
Number of ballots marked against applicant	53	

5446-74-R: Ontario Nurses' Association (Applicant) v. The Hospital Commission Sarnia General Hospital (Respondent).

Unit #2: "all registered and graduate nurses engaged in a nursing capacity regularly employed by the respondent for not more than twenty-four hours per week at its Sarnia General Hospital at Sarnia, save and except head nurses and persons above the rank of head nurses." (43 employees in the unit).

Number of names of persons on revised voters' list		76
Number of persons who cast ballots	61	
Ballots segregated and not counted	12	
Number of ballots marked in favour of applicant	49	
Number of ballots marked against applicant	0	

(BARGAINING UNIT #1 - SEE BARGAINING UNITS CERTIFIED - NO VOTE CONDUCTED).

APPLICATIONS FOR CERTIFICATION DISMISSED DURING MAY

No Vote Conducted

2604-72-R: Labour Bureau of the Painting and Decorating Contractors of Ontario (Applicant) v. Ontario Council of the International Brotherhood of Painters and Allied Trades (Respondent) v. The Painting Section of the Windsor Construction Association (Intervener). (no employees).

2687-72-R: Labour Bureau of the Painting and Decorating Contractors of Ontario (Applicant) v. Ontario Council of the International Brotherhood of Painters and Allied Trades (Respondent). (no employees).

4859-73-R: United Brotherhood of Carpenters and Joiners of America, Local Union 93 (Applicant) v. Dabner Associates Limited (Respondent) v. Group of Employees (Objectors). (5 employees).

5247-73-R: Health Sciences Association of Metropolitan Toronto (Applicant) v. The Board of Governors of the Riverdale Hospital (Respondent) v. Canadian Union of Public Employees, Local 79 (Intervener). (28 employees).

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5431-73-R: The Civil Service Association of Ontario (Inc.) (Applicant) v. Sunnybrook Hospital University of Toronto Clinic (Respondent). (2 employees).

5465-74-R: United Brotherhood of Carpenters and Joiners of America, Local Union 1669 (Applicant) v. Sherwin-Williams Paint and Wall (Respondent). (3 employees).

5518-74-R: International Union of Operating Engineers, Local 793 (Applicant) v. Alwell Forming Limited (Respondent). (4 employees).

5592-74-R: Labourers' International Union of North America Local Union No. 597 (Applicant) v. Ellis-Don Limited General Contractors (Respondent). (5 employees).

5705-74-R: Labourers' International Union of North America, Local 1059 (Applicant) v. Bot Construction Company Limited, Clarkson Construction Limited (Respondent). (12 employees).

Certification Dismissed Subsequent to Pre-Hearing Vote

5375-73-R: United Steelworkers of America (Applicant) v. Black Clawson-Kennedy Ltd. (Respondent).

Voting Constituency: "All office, clerical and technical employees of the respondent company at Owen Sound, Ontario save and except supervisors and persons above the rank of supervisor, employees of the Industrial Relations Department, persons regularly employed for not more than twenty-four hours per week and all employees covered by the subsisting collective agreement between the respondent and the United Steelworkers of America, Local 2469." (45 employees). (...THE BOARD DIRECTS THAT THE BALLOT BOX CONTAINING ALL THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE BE SEALED AND THE BALLOTS NOT COUNTED PENDING THE FURTHER DIRECTION OF THE BOARD.).

Number of names of persons on voters' list		44
Number of persons who cast ballots	44	
Number of ballots marked in favour of applicant	21	
Number of ballots marked against applicant	23	

5434-74-R: United Steelworkers of America (Applicant) v. American Hoist of Canada Limited (Respondent).

Voting Constituency: "All employees of the respondent at Brampton, Ontario, save and except foremen, persons above the rank of foreman, office and sales staff and students employed during the school vacation period." (165 employees).

Number of names of persons on revised voters' list		157
Number of persons who cast ballots	149	
Number of spoiled ballots	1	
Number of ballots marked in favour of applicant	67	
Number of ballots marked against applicant	81	

5515-74-R: Textile Workers Union of America, AFL-CIO-CLC (Applicant) v. Becton, Dickinson & Co., Canada, Ltd. (Respondent).

Voting Constituency: "All employees of the respondent at its plant in Mississauga, Ontario, save and except supervisors, persons above the rank of supervisor, office and sales staff, plant nurse, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (225 employees).

Number of names of persons on revised voters' list		218
Number of persons who cast ballots	209	
Number of spoiled ballots	2	
Number of ballots marked in favour of applicant	87	
Number of ballots marked against applicant	120	

5521-74-R: Labourers' International Union of North America, Local 506 (Applicant) v. Village Building Supply Limited (Respondent).

Voting Constituency: "All employees of the respondent working at or out of the respondent's premises at Concord, Ontario, save and except foremen and persons above the rank of foreman, office and sales staff." (8 employees).

Number of names of persons on revised voters' list		6
Number of persons who cast ballots	6	
Number of ballots marked in favour of applicant	3	
Number of ballots marked against applicant	3	

5533-74-R: International Chemical Workers Union (Applicant) v. Brockville Chemicals Industries Limited (Respondent).

Voting Constituency: "All office staff employed by the respondent at Maitland in the County of Grenville, save and except supervisors, those above the rank of supervisor, Maintenance Planners, Safety and Training Co-ordinator, Industrial Relations Personnel, secretary to the Chemical Division Manager, those working in a confidential capacity in matters relating to labour relations, graduate professional engineers, plant nurse, engineering and laboratory technicians, sales personnel, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (20 employees).

Number of names of persons on voters' list - prepared by employer -		18
Number of persons who cast ballots -	18	
Number of spoiled ballots -	1	
Number of ballots marked in favour of applicant	3	
Number of ballots marked against applicant	14	

Certification Dismissed Subsequent to Post-Hearing Vote

5169-73-R: Canadian Union of Public Employees (Applicant) v. Saga Canadian Management Services Limited (Respondent).

Unit: "all employees of the respondent at Brock University at St. Catharines, save and except manager, persons above the rank of manager, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (75 employees in the unit).

Number of names of persons on voters' list		18
Number of persons who cast ballots	17	
Ballots segregated and not counted	1	
Number of ballots marked in favour of applicant	7	
Number of ballots marked against applicant	9	

5341-73-R: Labourers International Union of North America Local 506 (Applicant) v. C. Romanelli Drywall Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario employed on building projects, except residential building projects, but including labourers employed as helpers of bricklayers and plasterers, save and except non-working foremen, persons above the rank of non-working foreman and persons covered by a collective agreement between the respondent and the International Brotherhood of Painters and Allied Trades, Local Union 1891." (3 employees in the unit).

Number of names of persons on revised voters' list		2
Number of persons who cast ballots	2	
Number of ballots marked in favour of applicant	0	
Number of ballots marked against applicant	2	

5460-74-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. Wilson Carpet Services Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, engaged in the installations of carpeting, save and except non-working foremen and persons above the rank of non-working foreman." (23 employees in the unit).

Number of names of persons on voters' list		22
Number of persons who cast ballots	22	
Ballots segregated and not counted	1	
Number of ballots marked in favour of applicant	10	
Number of ballots marked against applicant	11	

5468-74-R: United Paperworkers International Union (Applicant) v. Morgan Adhesives of Canada Limited (Respondent) v. Group of Employees (Objectors)

Unit: "all employees of the respondent at Brampton, save and except supervisors, persons above the rank of supervisor, office and sales staff and students employed during the school vacation period." (128 employees in the unit). (FOR PURPOSES OF CLARITY, THE BOARD NOTED THE TERM SUPERVISOR PERTAINS TO THOSE PERSONS AS OF THE DATE OF THE INSTANT APPLICATION WHO EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT.).

Number of names of persons on revised voters' list		128
Number of persons who cast ballots	121	
Number of spoiled ballots	1	
Number of ballots marked in favour of applicant	45	
Number of ballots marked against applicant	75	

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING MAY

5408-73-R: Labourers' International Union of North America, Local 607 (Applicant) v. Dineen Roads & Bridges Limited (Respondent) v. United Brotherhood of Carpenters and Joiners of America (Intervener). (6 employees).

5540-74-R: Labourers' International Union of North America, Local 607 (Applicant) v. Growleau Automotive (Kapuskasing Ltd.) (Respondent). (6 employees).

5562-74-R: Ottawa Typographical Union, Local 102 (Applicant) v. Mutual Press Ltd. (Respondent) v. Graphic Arts International Union, Bindery Division, Local 173 (Intervener) v. Office and Professional Employees' International Union, Local 225 (Intervener). (15 employees).

5586-74-R: Ready-Mix, Building Supply, Hydro & Construction Drivers, Warehousemen and Helpers Local 230 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Custom Concrete Ltd. (Respondent). (no employees).

5587-74-R: Ready-Mix, Building Supply, Hydro & Construction Drivers, Warehousemen and Helpers Local 230 Affiliated with The International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Custom Concrete Ltd. (Respondent). (no employees).

5616-74-R: Labourers International Union of North America, Local Union 493 (Applicant) v. Ken Bunyak Bus Lines (Respondent). (19 employees).

5619-74-R: The Carpenters' District Council of Toronto and vicinity on behalf of Locals 27; 666; 681; 1133; 1963; 3227 and 3233 of The United Brotherhood of Carpenters and Joiners of America (Applicant) v. TEC Contractors Limited (Respondent). (4 employees).

5623-74-R: Retail Clerks Union, Local 486 (Applicant) v. Lasalle Factories Limited (Respondent). (17 employees).

5656-74-R: International Union of Operating Engineers, Local 793 (Applicant) v. Armbro Materials & Construction Ltd. (Respondent). (5 employees).

5661-74-R: United Brotherhood of Carpenters and Joiners of America, Local Union 1669 (Applicant) v. Western Asbestos (1963) Ltd. (Respondent). (3 employees).

5688-74-R: Ready-Mix, Building Supply, Hydro & Construction Drivers, Warehousemen and Helpers Local 230 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Custom Concrete Ltd. (Respondent). (8 employees).

5689-74-R: Ready-Mix, Building Supply, Hydro & Construction Drivers, Warehousemen and Helpers Local 230 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Custom Concrete Ltd. (Respondent). (2 employees).

5692-74-R: International Union of United Plant Guard Workers of America - Local 1962 (Applicant) v. The Governing Council of The University of Toronto (Respondent) v. International Union of Operating Engineers, Local 796 (Intervener #1) v. Service Employees Union, Local 204 (Intervener #2). (52 employees).

5715-74-R: Carpenters' District Council of Toronto and vicinity, on behalf of Locals #27; # 666; #681; # 1133; # 1963; # 3227; and # 3233 of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. Group Thirty-Three Ltd. (Respondent). (2 employees).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED

OF DURING MAY

4572-73-R: Bill Roubos (Applicant) v. Canadian Food and Allied Workers Local Union 633, Chartered by The Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC (Respondent).

- and -

4588-73-R: Clara St. Pierre (Applicant) v. Canadian Food and Allied Workers Local Union 175, Chartered by the Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC (Respondent).

- and -

4589-73-R: Jack Arnold Meiser (Applicant) v. Canadian Food and Allied Workers Local Union 175, Chartered by the Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC (Respondent). (GRANTED).

Unit #1: "all meat department employees of Joseph Keller's I.G.A. Foodliner, at Chatham." (2 employees in the unit).

Number of names of persons on revised voters' list		1
Number of persons who cast ballots	1	
Number of ballots marked in favour of respondent	0	
Number of ballots marked against respondent	1	

Unit #2: "all persons regularly employed for not more than 24 hours per week and students employed during the school vacation period, by the Chatham I.G.A. Foodliner Store 101 at Chatham, save and except the Store Manager and persons above the rank of Store Manager." (9 employees in the unit).

Number of names of persons on revised voters' list		6
Number of persons who cast ballots	5	
Number of ballots marked in favour of respondent	0	
Number of ballots marked against respondent	5	

Unit #3: "all employees of Joseph Keller's I.G.A. Foodliner, at Chatham, save and except the meat department employees, store manager, persons above the rank of store manager, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (6 employees in the unit).

Number of names of persons on voters' list		8
Number of persons who cast ballots	7	
Number of ballots marked in favour of respondent	0	
Number of ballots marked against respondent	7	

5292-73-R: Howard Stewart Endicott (Applicant) v. International Union of Operating Engineers, Local 793 (Respondent) v. Donald Bye Excavating Company Limited (Intervener). (GRANTED).

Unit: "all employees of Donald Bye Excavating Company Limited within the Province of Ontario engaged in the operation of cranes, shovels, bulldozers and similar equipment and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and those above the rank of non-working foreman." (14 employees in the unit).

Number of names of persons on voters' list		6
Number of persons who cast ballots	6	
Number of ballots marked in favour of respondent	0	
Number of ballots marked against respondent	6	

5293-73-R: Kenneth A. Baker (Applicant) v. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America - UAW, Local 35 (Respondent) v. International Harvester Sales and Service (Intervener). (GRANTED).

Unit: "all office employees of International Harvester Company of Canada Limited, employed at the Chatham Sales and Service Store, 700 Richmond

Street, Chatham, save and except supervisors, persons above the rank of supervisor, the Accountant, Salesman and Progressive Students." (10 employees in the unit).

Number of names of persons on revised voters' list	9
Number of persons who cast ballots	9
Number of ballots marked in favour of respondent	6
Number of ballots marked against respondent	3

5325-73-R: Mrs. Gilberta Harrett (Applicant) v. Local Union 2341 International Brotherhood of Electrical Workers, (A.F.L.-C.I.O.-C.L.C.) (Respondent). (GRANTED).

Unit: "all employees of Philips Electronics Industries Ltd. at London, save and except foremen, persons above the rank of foreman, guards, office and sales staff." (135 employees in the unit).

Number of names of persons on revised voters' list	126
Number of persons who cast ballots	119
Number of spoiled ballots	2
Number of ballots marked in favour of respondent	10
Number of ballots marked against respondent	107

5503-74-R: Lottie Saunders, on behalf of a group of employees (Applicant) v. Service Employees Union Local #183 (Respondent) v. Beacon Hill Lodges of Canada Ltd. (Employer). (68 employees). (DISMISSED).

5590-74-R: R. J. Sowerby et al (Applicant) v. International Union of Operating Engineers, Local 772 (Respondent) v. Domtar Chemicals Limited, Sifto Salt Division, Goderich Mine (Intervener). (6 employees). (GRANTED).

APPLICATIONS FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING

MAY

5443-74-R: United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local Union 71 (Applicant) v. Honeywell Controls Limited (Respondent). (GRANTED).

5638-74-R: United Steelworkers of America (Applicant) v. Erie Shoe Company Limited (Respondent). (GRANTED).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING

MAY

5542-74-U: Hickeson-Langs Supply Company (Applicant) v. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) Local 525 (Respondent). (DISMISSED).

5543-74-U: Hickeson-Langs Supply Company (Applicant) v. Warehousemen and Miscellaneous Drivers Local Union 419, Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Respondent). (DISMISSED).

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5544-74-U: Hickeson-Langs Supply Company (Applicant) v. T. Baker and other Employees included on Schedule "A" hereto affixed (Respondents). (GRANTED).

(1974) 2 OLRB M.R. - PAGE 281.

5550-74-U: Langs Foods Limited (Applicant) v. L. Griffin and Other Employees Included On Schedule "A" Attached Hereto (Respondents). (WITHDRAWN).

5597-74-U: The Ontario Food Division of The Oshawa Group Limited (Applicant) v. Canadian Food and Allied Workers Local 633 Chartered by the Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC (Respondent). (WITHDRAWN).

5598-74-U: The Ontario Food Division of The Oshawa Group Limited (Applicant) v. Denis Arsenault and other Employees included on Schedule "A" hereto affixed (Respondents). (WITHDRAWN).

5625-74-U: International Hardware Company of Canada Limited (Applicant) v. Those persons named in Schedule "A" hereto (Respondents). (WITHDRAWN).

5627-74-U: International Hardware Company of Canada Limited (Applicant) v. Those persons named in Schedule "A" hereto (Respondents). (WITHDRAWN).

5655-74-U: Rule-Bilt Limited and The General Contractors' Section of the Toronto Construction Association (Applicants) v. The Carpenters District Council of Toronto and Vicinity on Behalf of Locals 27, 666, 1133, 1963, 3227, 3233 of The United Brotherhood of Carpenters and Joiners of America, and Phil Robichaud (Respondents). (WITHDRAWN).

5718-74-U: Carpenters District Council of Toronto and Vicinity, on Behalf of Locals 27, 666, 681, 1133, 1963, 3227 and 3233 of The United

Brotherhood of Carpenters & Joiners of America (Applicant) v. Wood, Wire & Metal Lathers' International Union, Local 562, and Mr. Allesaxndro, The Shop Steward (Respondent). (DISMISSED).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING MAY

5261-73-U: Labourers' International Union of North America, Local 183 (Applicant) v. Lesmar Construction Limited (Respondent). (GRANTED).

5397-73-U: Canadian Union of Operating Engineers (Applicant) v. A. E. LePage Limited (Respondent). (DISMISSED).

5487-74-U: Charles Huffman Limited (Applicant) v. The United Brotherhood of Carpenters and Joiners of America, Local 1450 (Respondent). (WITHDRAWN).

5488-74-U: Charles Huffman Limited (Respondent) v. Garland J. Wilson (Respondent). (WITHDRAWN).

5489-74-U: Charles Huffman Limited (Applicant) v. Hugh H. Poole, K. Kazimierczuk, Ernest McKnight, Vince Jackson (Respondents). (WITHDRAWN).

5545-74-U: Hickeson-Langs Supply Company (Applicant) v. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) Local 525 (Respondent). (WITHDRAWN).

5546-74-U: Hickeson-Langs Supply Company (Applicant) v. Warehousemen and Miscellaneous Drivers Local Union 419, Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Respondent). (WITHDRAWN).

5547-74-U: Hickeson-Langs Supply Company (Applicant) v. T. Baker and other Employees included on Schedule "B" (Respondent). (WITHDRAWN).

5553-74-U: Langs Foods Limited (Applicant) v. L. Griffin and other Employees included on Schedule "B" attached hereto (Respondents). (WITHDRAWN).

5599-74-U: The Ontario Food Division of The Oshawa Group Limited (Applicant) v. Canadian Food and Allied Workers Local 633 Chartered by the Amalgamated Meat Cutters and Butcher Workmen of North America AFL-CIO-CLC (Respondent). (WITHDRAWN).

5600-74-U: The Ontario Food Division of The Oshawa Group Limited (Applicant) v. Warehousemen and Miscellaneous Drivers Local Union 419 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Respondent). (WITHDRAWN).

5601-74-U: The Ontario Food Division of The Oshawa Group Limited (Applicant) v. Denis Arsenault and other employees included on Schedule "A" hereto affixed (Respondent). (WITHDRAWN).

5612-74-U: Local Union 387 - International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America - CLC (Applicant) v. Canada Dry Limited (Respondent). (DISMISSED).

5613-74-U: Local Union 387 - International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America - CLC (Applicant) v. Canada Dry Limited (Respondent). (DISMISSED).

5626-74-U: International Hardward Company of Canada Limited (Applicant) v. Those Persons Named in Schedule "A" (Respondents). (WITHDRAWN).

5628-74-U: International Hardward Company of Canada Limited (Applicant) v. Those Persons Named in Schedule "A" (Respondents). (WITHDRAWN).

5629-74-U: Local Union 387 - International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America - CLC (Applicant) v. Canada Dry Limited (Respondent). (DISMISSED).

5637-74-U: Canadian Union of Operating Engineers (Applicant) v. A. E. LePage Limited (Respondent). (DISMISSED).

5672-74-U: Local Union 387 - International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America - CLC (Applicant) v. Canada Dry Limited (Respondent). (DISMISSED).

APPLICATIONS FOR CONSENT TO PROSECUTE (HOSPITAL ARBITRATION ACT)

DISPOSED OF DURING MAY

49-74-PH: The Civil Service Association of Ontario (Inc.) (Applicant) v. Greater Niagara General Hospital (Respondent). (WITHDRAWN).

50-74-PH: C S A O National (Inc.) (Applicant) v. Greater Niagara General Hospital (Respondent). (WITHDRAWN).

51-74-PH: London and District Building Service Workers' Union, Local 220, S.E.I.U., A.F.L., C.I.O., C.L.C. (Applicant) v. Beaver Foods Limited (Respondent). (DISMISSED).

(1974) 2 OLRB M.R. - PAGE 302.

52-74-PH: London and District Building Service Workers' Union, Local 220, S.E.I.U., A.F.L., C.I.O., C.L.C. (Applicant) v. Palmerston & District Hospital (Respondent). (DISMISSED).

COMPLAINTS UNDER SECTION 79 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURINGMAY

4989-73-U: Kenneth Hughes (Complainant) v. Canadian Union of Public Employees and its Local 922 and The Board of Education for the Borough of North York (Respondents). (DISMISSED).

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5079-73-U: Eric Britnell (Complainant) v. International Union of Electrical Workers Local 523 (Respondent) v. RCA Limited, Prescott, Ontario (Intervener). (DISMISSED).

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5113-73-U: Service Employees Union, Local 204 (Complainant) v. Swiss Canadian Management Company Limited, and York Condominium Corporation No. 42 (Respondents). (DISMISSED).

(1974) 2 OLRB M.R. - PAGE 287.

5217-73-U: David Beaton (Complainant) v. General Truck Drivers, Union, Local 938 (Respondent) v. Consolidated Fastfrate Ltd. (Intervener). (TERMINATED).

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5218-73-U: David Beaton (Complainant) v. Consolidated Fastfrate Ltd. (Respondent). (TERMINATED).

5239-73-U: Dwight D. Hannah (Complainant) v. Sheetmetal Workers of North America Local 540 (Respondent). (DISMISSED).

5240-73-U: Dwight Hannah (Complainant) v. S. W. Fleming & Co. Ltd. (Respondent). (DISMISSED).

5363-73-U: Canadian Food and Allied Workers, Local Union 725, Chartered by The Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC (Complainant) v. Sayvette Limited (Respondent). (WITHDRAWN).

5382-73-U: United Steelworkers of America (Complainant) v. Metropolitan Garage Doors Limited (Respondent). (WITHDRAWN).

5429-73-U: Oscar DeGarie (Complainant) v. United Steelworkers of America Local 6500 (Respondent). (DISMISSED).

5442-74-U: Building Service Employees' International Union, Local 478, Affiliated with AFL-CIO-CLC (Complainant) v. Cochrane Nursing Home Limited (Respondent). (TERMINATED).

5464-74-U: Albert George Turner, 2632 Pt. Abino Rd. Stevensville, Ont. Employee Driver (Complainant) v. Direct Winters Transport Ont. Joint Grievance Committee Teamsters Local 879 (Respondent). (WITHDRAWN).

5475-74-U: George S. Harelkin (Complainant) v. Frank Lasorda - U.A.W. Local 444 (Respondent) (WITHDRAWN).

5561-74-U: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW) (Complainant) v. Vulcan Equipment Company Limited (Respondent). (WITHDRAWN).

5575-74-U: United Cement, Lime and Gypsum Workers International Union A.F.L., C.I.O., C.L.C. (Complainant) v. Wilroy Mines Limited, (Milton Limestone Aggregates Division) (Respondent). (DISMISSED).

5639-74-U: Canadian Union of Public Employees (Complainant) v. The Corporation of the City of Nanticoke (Respondent). (WITHDRAWN).

5724-74-U: Gilles P. Bellanger (Complainant) v. L. J. Labonte (Respondent). (WITHDRAWN).

APPLICATION FOR DIRECTION RE: UNLAWFUL STRIKES OR LOCK-OUTS

5653-74-U: The Wood, Wire & Metal Lathers' International Union, Local 562 (Applicant) v. The Carpenters District Council of Toronto and vicinity on behalf of Locals 27, 666, 681, 1133, 1963, 3227, 3233 of The United Brotherhood of Carpenters and Joiners of America, United Brotherhood of Carpenters and Joiners of America, Local 1747, William Johnston and P. Robichaud (Respondents). (DIRECTION).

APPLICATIONS UNDER SECTION 55 DISPOSED OF DURING MAY

3127-72-R: Local Union 633 and Local Union 175 Canadian Food and Allied Workers chartered by Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC (Applicants) v. Zehrs Markets Limited (Respondent) v. Busy B Discount Foods Limited (Intervener) v. Group of Employees (Objectors). (DISMISSED).

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5494-74-R: The Canadian Union of Public Employees (Applicant) v. The Corporation of the City of Nanticoke (Respondent). (WITHDRAWN).

JURISDICTIONAL DISPUTES

3970-73-JD: The Operative Plasterers' and Cement Masons' International Association, Local 48 (Complainant) v. A. V. Hallam Lathing and Plastering Limited, and International Brotherhood of Painters and Allied Trades, Local 1891 (Respondents). (WITHDRAWN).

5365-73-JD: Operative Plasterers' & Cement Masons' International Association, Local 48 (Complainant) v. Trident Drywall Limited and International Brotherhood of Painters and Allied Trades, Local 1891 (Respondents). (WITHDRAWN).

APPLICATIONS FOR DETERMINATION UNDER SECTION 95(2) DISPOSED OF DURING

MAY

4564-73-M: United Steelworkers of America (Applicant) v. West Bend of Canada (Respondent). (AFFIRMATIVE).

5353-73-M: London & District Building Service Workers' Union, Local 220 (Applicant) v. Victoria Hospital, London (Respondent). (GRANTED).

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5507-74-M: Golden Stairs Tavern, Company Ltd. (Employer) v. Retail, Wholesale and Hotel and Restaurant Employees Union, Local 448, A.F.L.-C.I.O.-C.L.C., chartered by the International Retail, Wholesale and Department Store Union, A.F.L.-C.I.O.-C.L.C. (Trade Union). (AFFIRMATIVE).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 79

4971-73-U: Beckers Milk Retail Store Employees Union (Complainant) v. Becker Milk Company (Respondent). (REQUEST DENIED).

4972-73-U: Beckers Milk Retail Store Employees Union (Complainant) v. Becker Milk Company (Respondent). (REQUEST DENIED).

5065-73-U: George Wilson (Complainant) v. The Canadian Union of Public Employees Local 1334 (Respondent). (REQUEST DENIED).

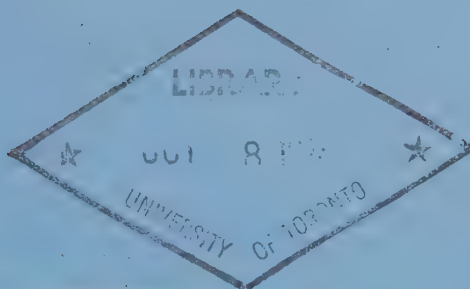
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4442-73-M: Metropolitan Separate School Board (Applicant) v. Canadian Union of Public Employees and its Local 1328 (Respondent). (REQUEST DENIED).

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Monthly Report

ONTARIO LABOUR RELATIONS BOARD

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ONTARIO LABOUR RELATIONS BOARD REPORTS

A MONTHLY SERIES OF DECISIONS FROM THE

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<p>COOKSVILLE STEEL LIMITED v. INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRONWORKERS, LOCAL UNION 721.....</p> <p>Bargaining Rights - Abandonment - Onus of establishing con- tinued interest in bargaining rights - Effect of failure to retain an interest - Effect of failure to satisfy onus S96 - Whether Minister advised to appoint a conciliation officer.</p> <p>COOKSVILLE STEEL LIMITED v. INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRONWORKERS, LOCAL UNION 721.....</p> <p>Consent to Prosecute - Privilege - S14 - Effect of nature of a violation of requirement to bargain in good faith - Whether a continuing violation - Effect on 6 month limitation period under the summary conviction proceedings of <u>The Criminal Code</u> - Whether the application is untimely - S100(2) - Extent of privilege with respect to communications to the conciliation officer - Whether a privative or non-privative matter subject to the privilege - Whether parties may waive the privilege - Effect of the standard of proof placed on a party alleging violation of provisions of the Act on consent proceedings - Whether analagous to a preliminary hearing on a criminal matter.</p> <p>TORONTO NEWSPAPER GUILD v. C C H CANADIAN LIMITED.....</p> <p>Construction Industry - Termination - S49(1) - Effect of applica- tion made within a year of the Board's certificate granting bargaining rights - Whether application timely - Effect of timeliness issue had the application been filed pursuant to section S112(1) of the Act - Whether the parties prepared to make representations on the issue.</p> <p>EMPLOYEES OF S. HENRY & SONS v. LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 v. S. HENRY & SONS CO. LTD.....</p> <p>Duty of Fair Representation - S79 - S60 - Whether a failure to be invited to attend union meetings with respect to dis- position of discharge grievance evidence of bad faith rep- resentation - Effect of settlement of the grievance in light of a weak case for arbitration - Whether a mistake with respect to the appointment of a union nominee to an arbitration board is evidence of bad faith.</p> <p>KARL KRAFCZEK v. THE UNITED STEELWORKERS OF AMERICA LOCAL 3767, THE STEEL COMPANY OF CANADA, LIMITED.....</p>	<p>365</p> <p>365</p> <p>375</p> <p>339</p> <p>392</p>
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Termination - Construction Industry - S49(1) - Effect of application made within a year of the Board's certificate granting bargaining rights - Whether application timely - Effect of timeliness issue had the application been filed pursuant to section S112(1) of the Act - Whether the parties prepared to make representations on the issue.

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EMPLOYEES OF S. HENRY & SONS v. LABOURERS INTERNATIONAL
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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING JUNE 1974

BARGAINING AGENTS CERTIFIED DURING JUNE

No Vote Conducted

2138-72-R: The Ontario Erectors Association (Applicant) v. The International Association of Bridge, Structural and Ornamental Ironworkers, Local Union 700 (Respondent) v. Electrical Power Systems Construction Association (Intervener #1) v. Hydro-Electric Power Commission of Ontario (Intervener #2) v. Labourers' International Union of North America, Ontario Provincial District Council et al (Intervener #3) v. Erectors Division, Ontario Precast Concrete Manufacturers' Association (Intervener #4).

Unit: "all employers of ironworkers for whom the respondent has bargaining rights in the Counties of Elgin, Essex, Kent, Lambton and Middlesex in the industrial, commercial and institutional and heavy engineering sector of the construction industry." (no employees in the unit). (FOR THE PURPOSES OF CLARITY THE BOARD FURTHER NOTED THAT THE TERM IRONWORKERS DOES NOT INCLUDE RODMEN.).

2139-72-R: The Ontario Erectors Association (Applicant) v. The International Association of Bridge, Structural and Ornamental Ironworkers, Local Union 721 (Respondent) v. Electrical Power Systems Construction Association (Intervener #1) v. Hydro-Electric Power Commission of Ontario (Intervener #2) v. Labourers' International Union of North America Ontario Provincial District Council et al (Intervener #3) v. Labourers' International Union of North America, Local 506 (Intervener #4) v. Erectors Division, Ontario Precast Concrete Manufacturers' Association (Intervener #5) v. Ontario Hoist and Crane Association (Intervener #6).

Unit: "all employees of ironworkers for whom the respondent has bargaining rights in the District of Muskoka and all the counties of Dufferin, Durham, Haliburton, Northumberland, Ontario, Peel, Peterborough, Prince Edward, Simcoe, Victoria, and York, and in the county of Hastings the Townships of: - Marmora, Rawdon, Sidney, and Thurlow, also, in the county of Halton - the premises of the Ford Motor Company in the industrial commercial and institutional and heavy engineering sector of the construction industry." (no employees in the unit). (FOR THE PURPOSES OF CLARITY THE BOARD FURTHER NOTED THAT THE TERM IRONWORKERS DOES NOT INCLUDE RODMEN.).

2140-72-R: The Ontario Erectors Association (Applicant) v. The International Association of Bridge, Structural and Ornamental Ironworkers, Local Union 736 (Respondent) v. Electrical Power Systems Construction

Association (Intervener #1) v. Hydro-Electric Power Commission of Ontario (Intervener #2) v. Labourers' International Union of North America, Ontario Provincial District Council et al (Intervener #3) v. Erectors Division, Ontario Precast Concrete Manufacturers' Association (Intervener #4).

Unit: "all employers of ironworkers for whom the respondent has bargaining rights in the Counties of Brant, Bruce, Gray, Haldimand, Huron, Lincoln, Norfolk, Oxford, Perth, Waterloo, Welland, Wellington, and Westworth, and all of the County of Halton - except for the premises of the Ford Motor Company in the industrial, commercial and institutional and heavy engineering sector of the construction industry." (no employees in the unit). (FOR THE PURPOSES OF CLARITY THE BOARD FURTHER NOTED THAT THE TERM IRONWORKERS DOES NOT INCLUDE RODMEN).

2141-72-R: The Ontario Erectors Association (Applicant) v. The International Association of Bridge, Structural and Ornamental Ironworkers, Local Union 765 (Respondent) v. Electrical Power Systems Construction Association (Intervener #1) v. Hydro-Electric Power Commission of Ontario (Intervener #2) v. Labourers' International Union of North America, Ontario Provincial District Council et al (Intervener #3) v. Erectors Division, Ontario Precast Concrete Manufacturers' Association (Intervener #4).

Unit: "all employers of ironworkers for whom the respondent has bargaining rights in the counties of Addington, Carlton, Dundas, Frontenac, Glengarry, Grenville, Lanark, Leeds, Lennox, Prescott, Renfrew, Russell, Stormont, and all of the county of Hastings except the Townships of: - Marmora, Rawdon, Sidney and Thurlow in the industrial, commercial and institutional and heavy engineering sector of the construction industry." (no employees in the unit). (FOR THE PURPOSES OF CLARITY THE BOARD FURTHER NOTED THAT THE TERM IRONWORKERS DOES NOT INCLUDE RODMEN.).

2142-72-R: The Ontario Erectors Association (Applicant) v. The International Association of Bridge, Structural and Ornamental Ironworkers, Local Union 786 (Respondent) v. Electrical Power Systems Construction Association (Intervener #1) v. Hydro-Electric Power Commission of Ontario (Intervener #2) v. Labourers' International Union of North America, Ontario Provincial District Council et at (Intervener #3) v. Erectors Division, Ontario Precast Concrete Manufacturers' Association (Intervener #4).

Unit: "all employers of ironworkers for whom the respondent has bargaining rights in the Districts of Algoma, Manitoulin, Nipissing, Parry Sound, Sudbury, Temiskaming, and all of the District of Cochrane, south of the 50th degree latitude in the industrial, commercial and institutional and heavy engineering sector of the construction industry." (no employees in the unit). (FOR THE PURPOSES OF CLARITY THE BOARD FURTHER NOTED THAT THE TERM IRONWORKERS DOES NOT INCLUDE RODMEN.).

5187-73-R: Ontario Public Service Staff Union (Applicant) v. The Civil Service Association of Ontario (Inc.) (Respondent).

Unit: "all employees of the respondent in the Province of Ontario, save and except general manager, administrator of finance, administrator of membership representation, representation officer, senior negotiator, coordinator, research director and office and clerical staff." (26 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5211-73-R: Building Service Employees International Union Local 478, Affiliated with A.F. of L., C.I.O., C.L.C. (Applicant) v. Cochrane Nursing Home Limited (Respondent) v. Cikent Corporation Limited (Intervener) v. Group of Employees (Objectors).
- and -

5212-73-R: Building Service Employees International Union Local 478, Affiliated with A.F., of L., C.I.O., C.L.C. (Applicant) v. Cochrane Nursing Home Limited (Respondent) v. Cikent Corporation Limited (Intervener) v. Group of Employees (Objectors).

Unit #1: "all employees of the respondent at The Chateau Nursing Home Annex located on Government Road, at Kirkland Lake, save and except professional nursing staff, physio-therapist, occupational therapist, supervisors, persons above the rank of supervisor, office staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (42 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Unit #2: "all employees of the respondent regularly employed for not more than twenty-four hours per week at The Chateau Nursing Home Annex located on Government Road, at Kirkland Lake, save and except professional nursing staff, physio-therapist, occupational therapist, supervisors, persons above the rank of supervisor, and office staff." (4 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(BARGAINING UNIT #3 AND #4 - SEE APPLICATION FOR CERTIFICATION DISMISSED - NO VOTE CONDUCTED).

5305-73-R: Ottawa Typographical Union, Local 102 (Applicant) v. Public Service Alliance of Canada (Respondent).

Unit: "all employees of the respondent engaged in its print shop and mailing room operations at Ottawa save and except executive secretary and persons above the rank of executive secretary." (11 employees in the unit).

5331-73-R: Ontario Nurses' Association (Applicant) v. Central Hospital Corporation (Respondent).

Unit: "all registered and graduate nurses employed by the respondent in a nursing capacity in its hospital in Metropolitan Toronto, save and except head nurses, persons above the rank of head nurse, and persons regularly employed for not more than 24 hours per week." (82 employees in the unit).

5439-74-R: International Molders and Allied Workers Union (Applicant) v. LOC - Pipe Division of Lake Ontario Concrete Industries, a division of Kilmer Van Nostrand Co. Limited (Respondent) v. Labourers' International Union of North America, Local 597 (Intervener).

Unit: "all employees of the respondent at Whitby, save and except foreman, persons above the rank of foreman, office and sales staff." (11 employees in the unit).

5459-74-R: Ontario Nurses' Association (Applicant) v. Lake of the Woods District Hospital (Respondent).

Unit #1: "all registered and graduate nurses employed by the respondent at Kenora engaged in a nursing capacity, save and except head nurses, persons above the rank of head nurse, director of registered nursing assistants' training centre, in-service co-ordinator, and persons regularly employed for not more than 24 hours per week." (39 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(BARGAINING UNIT #2 - SEE APPLICATION CERTIFIED SUBSEQUENT TO POST-HEARING VOTE).

5500-74-R: Ontario Nurses' Association (Applicant) v. The Port Hope and District Hospital (The Port Hope Hospital Trust) (Respondent).

Unit #1: "all registered and graduate nurses engaged in a nursing capacity employed by the respondent at Port Hope, save and except head nurses, persons above the rank of head nurse and persons regularly employed for not more than twenty-four hours per week." (25 employees in the unit).

(BARGAINING UNIT #2 - SEE APPLICATION CERTIFIED SUBSEQUENT TO POST-HEARING VOTE).

5501-74-R: Canadian Union of Public Employees (Applicant) v. The Shaver Hospital for Chest Diseases (Respondent) v. The Candian Union of Operating Engineers (Intervener).

Unit #1: "all stationary engineers employed in the operation of the boiler room of the respondent in St. Catharines." (79 employees in the unit).

Unit #2: "all employees of the respondent at St. Catharines, save and except professional medical staff, graduate nursing staff, undergraduate nurses, graduate pharmacists, undergraduate pharmacists, graduate dietitians, student dietitians, technical personnel, supervisors, persons above the rank of supervisor, office and clerical staff, persons regularly employed for not more than 24 hours per week, students

employed during the school vacation period, and stationary engineers employed in the operation of the boiler room." (27 employees in the unit). (FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT THE TERM TECHNICAL PERSONNEL COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS.).

5523-74-R: United Steelworkers of America (Applicant) v. W. O. Stinson & Son (Respondent).

Unit: "all employees of the respondent at Leitrem employed as oil burner servicemen, save and except foremen and persons above the rank of foreman." (2 employees in the unit).

5524-74-R: The Lumber and Sawmill Workers' Union, Local 2995 of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. Elk Lake Planing Mill Ltd. (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at its sawmill and planing mill at Elk Lake, save and except foremen, persons above the rank of foreman and office staff." (62 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5558-74-R: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW) (Applicant) v. Vulcan Equipment Company Limited (Respondent) v. Sheet Metal Workers' International Assoc., Local #540 (Intervener) v. Group of Employees (Objectors).

Unit: "all employees of the respondent in Fergus, Ontario, save and except foremen, persons above the rank of foreman and office and sales staff." (20 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5643-74-R: The Civil Service Association of Ontario (Inc.) (Applicant) v. Chedoke Hospitals (Respondent).

Unit: "all x-ray technologists employed by the respondent in the x-ray Laboratory in Hamilton, save and except assistant chief technologists, persons above the rank of assistant chief technologist, office and clerical staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (7 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5649-74-R: Ontario Nurses' Association (Applicant) v. Board of Health of the Haliburton, Kawartha, Pine Ridge District Health Unit (Respondent).

Unit: "all registered and graduate nurses employed by the respondent in the Counties of Haliburton, Victoria and Northumberland, save and except supervisors and persons above the rank of supervisor." (33 employees in the unit).

5651-74-R: International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local #128 (Applicant) v. Babcock & Wilcox Canada Ltd. (Respondent).

Unit: "all employees of the respondent at Sarnia, save and except foremen, persons above the rank of foreman, and office staff." (2 employees in the unit).

5654-74-R: International Union of Operating Engineers, Local 793 (Applicant) v. Action Crane Limited (Respondent).

Unit: "all employees of the respondent in the County of Wentworth including part of Township of North Dumfries annexed from Beverly Township and the Township of Nassagaweya and the Town of Burlington in the County of Halton engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

5664-74-R: Labourers' International Union of North America Local Union No. 597 (Applicant) v. Can-Am Dutch Investments Limited (Respondent).

Unit: "all construction labourers employed by the respondent on construction projects in the County of Ontario (except the Townships of Pickering, Rama, Mara and Thorah) and the County of Durham (except the Township of Hope), save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit). (HAVING REGARD TO THE FOREGOING).

5669-74-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. Jim's Renovating (Respondent).

Unit: "all construction labourers, carpenters and carpenters' apprentices in the employ of the respondent in the District of Kenora, including the Patricia Portion, save and except non-working foremen and persons above the rank of non-working foreman " (2 employees in the unit). (HAVING REGARD TO THE FOREGOING).

5671-74-R: Canadian Union of Public Employees (Applicant) v. The Corporation of the Town of Valley East (Respondent).

Unit: "all employees of the respondent in the Town of Valley East in its Parks and Recreation Department, save and except foremen, persons above the rank of foreman, office and clerical staff, persons regularly

employed for not more than 24 hours per week and students employed during their normal school vacation period." (13 employees in the unit) (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5682-74-R: Service Employees Union, Local 204, Affiliated with the S.E.I.U., A.F. of L., C.I.O., C.L.C. (Applicant) v. VS Services Ltd. (Food Management Services) at its Unit located at Lincoln Place Nursing Home, Toronto, Ontario (Respondent).

Unit: "all employees of the respondent at Lincoln Place Nursing Home, Toronto, save and except supervisors, persons above the rank of supervisor, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (16 employees in the unit).

5683-74-R: United Cement, Lime and Gypsum Workers International Union A.F.L., C.I.O., C.L.C. (Applicant) v. Donald Bye Excavating Co. Ltd. (Respondent).

Unit: "all employees of the respondent at Peterborough, save and except foremen, persons above the rank of foreman, and office staff." (16 employees in the unit).

5685-74-R: Lumber and Sawmill Workers Union, Local 2995 of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. Kokotow Lumber Limited (Respondent).

Unit: "all employees of the respondent engaged in its woods operation in the Township of Gross and in the Townships immediately adjacent thereto, save and except foremen, persons above the rank of foreman, office staff and scalers." (24 employees in the unit).

5686-74-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. Can-Am Dutch Investments Limited (Respondent).

Unit: "all carpenters and carpenters' apprentices employed by the respondent on construction projects in the County of Ontario (except the Townships of Pickering, Rama, Mara and Thorah) and the County of Durham (except the Township of Hope), save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit). (HAVING REGARD TO THE FOREGOING).

5696-74-R: Labourers' International Union of North America, Local 506 (Applicant) v. Transway Steel (Respondent).

Unit: "all construction labourers in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton

in the County of Halton and the Township of Pickering in the County of Ontario employed on building projects, except residential building projects, but including labourers employed as helpers of bricklayers and plasterers, save and except non-working foremen and persons above the rank of non-working foreman." (8 employees in the unit).

5699-74-R: Laborers International Union of North America, Local 749 (Applicant) v. Newman Bros. Ltd. (Respondent).

Unit: "all construction labourers in the employ of the respondent in the Counties of Essex and Kent, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

5700-74-R: International Association of Bridge, Structural and Ornamental Ironworkers, Local Union 721 (Applicant) v. Lake-Land Mechanical Contractors Limited (Respondent).

Unit: "all ironworkers in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

5706-74-R: United Steelworkers of America (Applicant) v. GSW Appliances Limited (Respondent).

Unit: "all employees in the service division of the respondent company working at London, save and except foremen, persons above the rank of foreman and employees covered by subsisting collective agreements." (7 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5712-74-R: The International Association of Bridge, Structural and Ornamental Ironworkers, Local 736 (Applicant) v. Len Ariss and Company Limited (Respondent) v. The Grand River Valley District Council of the United Brotherhood of Carpenters and Joiners of America (Intervener).

Unit: "all ironworkers in the employ of the respondent in the County of Wellington, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

5719-74-R: The Civil Service Association of Ontario (Inc.) (Applicant) v. Welland County General Hospital (Respondent) v. Service Employees Union, Local 204 (Intervener).

Unit: "all medical laboratory technologists and registered and non-registered laboratory helpers employed by the respondent in the City of Welland, save and except assistant chief technologists, chief technologists, office and clerical employees, infection control officer, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (30 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5721-74-R: United Steelworkers of America (Applicant) v. Capital Burner Service of Ottawa Ltd. (Respondent).

Unit: "all employees of the respondent at Ottawa employed as oil burner and gas burner servicemen, save and except foremen and persons above the rank of foreman." (2 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5727-74-R: Labourers' International Union of North America, Local 527 (Applicant) v. Palace Pier Company Ltd. (Respondent).

Unit: "all construction labourers in the employ of the respondent in the Regional Municipality of Ottawa - Carleton and the United Counties of Prescott and Russell, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

5728-74-R: United Brotherhood of Carpenters and Joiners of America, Local Union 1190 (Applicant) v. Carlo Carpenter (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit).

5729-74-R: International Association of Bridge, Structural and Ornamental Ironworkers Local Union 721 (Applicant) v. Omer Steel Service (Respondent).

Unit: "all reinforcing rodmen in the employ of the respondent in the Counties of Peterborough, Victoria and the Provisional County of Haliburton, save and except non-working foremen and persons above the rank of non-working foreman." (11 employees in the unit).

5730-74-R: International Association of Bridge, Structural and Ornamental Ironworkers, Local 721 (Applicant) v. Schwenger Construction Limited (Respondent).

Unit: "all reinforcing rodmen in the employ of the respondent in the Counties of Peterborough, Victoria and the Provisional County of Haliburton, save and except non-working foremen and persons above the rank of non-working foreman. (2 employees in the unit).

5734-74-R: Labourers' International Union of North America, Local 837 (Applicant) v. Con-Drain Company Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent in the Regional Municipality of Niagara and the County of Haldimand, save and except non-working foremen and persons above the rank of non-working foreman." (6 employees in the unit).

5738-74-R: United Brotherhood of Carpenters and Joiners of America, Local Union 1190 (Applicant) v. Mariani Carpenters (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the County of Ontario (except the Townships of Pickering, Rama, Mara and Thorah) and the County of Durham (except the Township of Hope), save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

5740-74-R: International Molders & Allied Workers Union (Applicant) v. Canon Limited, Pipe Division (Respondent).

Unit: "all office and technical employees of the respondent at Rexdale, save and except foremen, persons above the rank of foreman, Works Manager, Asst. Works Manager, Secretary to the Works Manager and Asst. Works Manager, Office Manager, Chief Engineer, Manufacturing, Project Engineer, Chief Designer, Production Control Supervisor, Quality Control Supervisor, Quality Control Project Leader, R. & D. Manager, R. & D. Project Manager, R. & D. Project Engineer, those employees covered by an existing collective agreement, and students employed during the school vacation period." (12 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5741-74-R: The Civil Service Association of Ontario (Inc.) (Applicant) v. R.S. Kane Ltd. (Kane Ambulance Service) (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto employed in the ambulance service operations, save and except supervisors, persons above the rank of supervisor and office and clerical employees." (10 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5743-74-R: United Electrical, Radio and Machine Workers of America (UE) (Applicant) v. Plessey Canada Limited (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto, save

and except foremen, persons above the rank of foreman, office and sales staff, and installers." (47 employees in the unit).

5746-74-R: International Brotherhood of Painters and Allied Trades Local Union 1891 (Applicant) v. Superior Painting Ltd. (Respondent).

Unit: "all painters and painters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

5747-74-R: Christian Labour Association of Canada (Applicant) v. Nadeco Limited (Respondent).

Unit: "all construction labourers, steamfitters and steamfitters' apprentices in the employ of the respondent in the County of Renfrew, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit). (HAVING REGARD TO THE FOREGOING AND UPON AGREEMENT OF THE PARTIES).

5751-74-R: International Union of Operating Engineers, Local 793 (Applicant) v. Cliffside Pipelayers Limited (Respondent) v. Ready-Mix, Building Supply, Hydro & Construction Drivers, Warehousemen and Helpers Local 230 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Intervener).

Unit: "all employees of the respondent at its shop in Scarborough, save and except foremen, persons above the rank of foreman, office staff, dispatchers, and persons covered by subsisting collective agreements." (9 employees in the unit).

5752-74-R: Warehousemen and Miscellaneous Drivers Local 419 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. McGraw-Hill Ryerson Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office and sales staff, security guards, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (29 employees in the unit).

5761-74-R: Laundry, Dry Cleaning & Dye House Workers International Union, Local 351 (Applicant) v. Ottawa Regional Hospital Linen Service, Inc. (Respondent).

Unit: "all employees of the respondent at its plant in Ottawa, save and except foremen, foreladies, persons above the rank of foreman and forelady, office and sales staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (7 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5764-74-R: Graphic Arts International Union, London Local 517 (Applicant) v. Sepco Graphics (Respondent).

Unit: "all lithographers, their apprentices and helpers employed by the respondent at London, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

5767-74-R: Teamsters, Local Union 879 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. George F. Pettinos (Canada) Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent working at and out of Hamilton, save and except foremen, dispatchers, persons above the rank of foreman and dispatcher, office and sales staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (10 employees in the unit).

5777-74-R: United Brotherhood of Carpenters and Joiners of America, Local Union 1190 (Applicant) v. Valley Carpenters (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (8 employees in the unit).

5779-74-R: Local Union 2028 of the International Brotherhood of Electrical Workers (Applicant) v. The Hydro Electric Commission of the Town of Port Hope (Respondent).

Unit: "all employees of the respondent at Port Hope, save and except foremen, persons above the rank of foreman, office, sales and clerical staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period " (9 employees in the unit).

5783-74-R: United Brotherhood of Carpenters and Joiners of America, Local Union 1190 (Applicant) v M & B Carpenter Limited (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (7 employees in the unit).

5784-74-R: United Brotherhood of Carpenters and Joiners of America, Local 1190 (Applicant) v. Osler Carpenters (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (18 employees in the unit).

5785-74-R: United Brotherhood of Carpenters and Joiners of America, Local 1190 (Applicant) v. Buxton Carpenter (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the County of Simcoe, the District Municipality of Muskoka and the Township of Thorah and all land north thereof in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

5786-74-R: International Chemical Workers Union (Applicant) v. Zochem Limited (Respondent) v. The International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) (Intervenor).

Unit: "all employees of the respondent at Brampton, save and except foremen, persons above the rank of foreman, office staff and students employed during the school vacation period." (5 employees in the unit). (FOR THE PURPOSES OF CLARITY THE BOARD NOTED THAT EMPLOYEES OF THE RESPONDENT ON ITS LABORATORY STAFF ARE INCLUDED IN THE EXCLUSION OF OFFICE STAFF.).

5787-74-R: Warehousemen and Miscellaneous Drivers Local 419 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Leamington Vegetable Growers' Co-Operative Limited, Operating as, G. Smith Produce Company (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office and sales staff." (13 employees in the unit).

5788-74-R: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW) (Applicant) v. Philips Electronics Industries Ltd. Lamp Manufacturing Division (Respondent).

Unit: "all employees of the respondent at London, Ontario, save and except foremen, persons above the rank of foreman, office and sales staff, and plant guards." (129 employees in the unit).

5796-74-R: Ontario Nurses Association (Applicant) v. Saugeen Memorial Hospital Southampton, Ontario (Respondent).

Unit: "all registered and graduate nurses employed by the respondent at Southampton, Ontario, engaged in a nursing capacity, save and except in-service co-ordinator, head nurses and persons above the rank of head nurse " (34 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5798-74-R: Toronto Printing Pressmen & Assistants' Union No. 10 (Applicant) v. Samuel Bingham Company (Canada) Limited (Respondent) v. Employee (Objector).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office and sales staff." (10 employees in the unit).

5804-74-R: Laborers' International Union of North America Local Union No. 597 (Applicant) v. Leemark Contracting (Respondent).

Unit: "all construction labourers in the employ of the respondent in the Townships of Hope, South Monaghan, Alnwick and all lands south thereof in the United Counties of Northumberland and Durham, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

5809-74-R: Restaurant, Cafeteria and Tavern Employees Union, Local 254 of the Hotel and Restaurant Employees and Bartenders International Union (Applicant) v. The Ontario Jockey Club (Respondent).

Unit: "all employees of the respondent at its kitchens, cafeterias, restaurants and food stands at Woodbine Race Track in the Borough of Etobicoke in the Municipality of Metropolitan Toronto save and except assistant manager, persons above the rank of assistant manager, executive chefs, office staff, doormen, beverage room porters, hostesses, check room attendants, persons regularly employed for not more than twenty-four hours per week, and persons now represented by other bargaining agents." (198 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5810-74-R: Labourers' International Union of North America, Local 607 (Applicant) v. Tilechem Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent within a radius of 20 miles of the Kapuskasing post office, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

5816-74-R: International Association of Bridge, Structural & Ornamental Ironworkers, Local 759 (Applicant) v. Canusa Water Well Co. Limited (Respondent).

Unit: "ironworkers in the employ of the respondent in the District of Thunder Bay, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

5819-74-R: United Brotherhood of Carpenters and Joiners of America, Local Union 1190 (Applicant) v. G. & L. Carpenters Limited (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (13 employees in the unit).

5820-74-R: Labourers' International Union of North America, Local 183 (Applicant) v. Dinardo Brothers Ltd. (Respondent).

Unit: "all construction labourers in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except construction labourers employed on building projects, non-working foremen and persons above the rank of non-working foreman." (6 employees in the unit).

5821-74-R: Labourers' International Union of North America, Local 183 (Applicant) v. C.A.L.S. Construction Ltd. (Respondent).

Unit: "all construction labourers in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except construction labourers employed on building projects, non-working foremen and persons above the rank of non-working foreman." (12 employees in the unit).

5822-74-R: Printing Specialties and Paper Products Union, Local 466 (Applicant) v. E.S. & A. Robinson (Canada) Limited (Respondent).

Unit: "all employees of the respondent at Leaside, employed in the Quality Inspection Laboratory as Quality Inspection Laboratory Technicians save and except Quality Inspection Supervisors and Quality Inspection Managers, persons above the rank of Quality Inspection Supervisor and Quality Inspection Manager and persons covered by subsisting collective agreements between the applicant and the respondent." (7 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5824-74-R: United Cement, Lime and Gypsum Workers International Union A.F.L., C.I.O., C.L.C. (Applicant) v. Sunshine Uniform and Supply Co. Limited (Respondent).

Unit: "all employees of the respondent in the City of Peterborough, save and except foremen, persons above the rank of foreman, office and sales staff, stockroom staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (7 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5825-74-R: United Steelworkers of America (Applicant) v. Star Expansion Industries, Ltd. (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office and sales staff and students employed during the school vacation period." (86 employees in the unit).

5829-74-R: International Brotherhood of Painters and Allied Trades, Local 200 (Applicant) v. W. Schmidt Painters (Respondent).

Unit: "all painters and painters' apprentices in the employ of the respondent in the Regional Municipality of Ottawa - Carleton and the United Counties of Prescott and Russell, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit).

5837-74-R: International Union of Operating Engineers, Local 793 (Applicant) v. W.C.K. Enterprises Ltd. (Respondent).

Unit: "all employees of the respondent in the District of Thunder Bay, engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

5864-74-R: Local Union 1190, United Brotherhood of Carpenters and Joiners of America (Applicant) v. F. & R. Carpenter Contractors (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit).

5865-74-R: Labourers' International Union of North America, Local 183 (Applicant) v. Humberview Const. Ltd. (Respondent).

Unit: "all construction labourers in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except construction labourers employed on building projects, non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

5875-74-R: Labourers' International Union of North America, Local 183 (Applicant) v. Mizzi Bros. Const. Ltd. (Respondent).

Unit: "all construction labourers in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except construction labourers employed on building projects, non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

5880-74-R: United Brotherhood of Carpenters and Joiners of America, Local 2486 (Applicant) v. 289728 Ontario Limited operating as De Rose Northern (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent within a fifty mile radius of the Timmins Federal Building, save and except non-working foremen and persons above the rank of non-working foreman." (7 employees in the unit).

5881-74-R: United Brotherhood of Carpenters & Joiners of America, Local 2486 (Applicant) v. Pigott Construction Ltd. (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the Townships of Kirkland Lake and the Geographic Townships

(unorganized) immediately adjacent thereto in the District of Timiskaming save and except non-working foremen and persons above the rank of non-working foreman." (6 employees in the unit).

5882-74-R: United Brotherhood of Carpenters & Joiners of America, Local 2486 (Applicant) v. Pigott Construction Ltd. (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent within a twenty mile radius of the North Bay post office, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit).

5887-74-R: Labourers' International Union of North America, Local 183 (Applicant) v. Natale Bros. Paving Co. Ltd. (Respondent).

Unit: "all construction labourers in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except construction labourers employed on building projects, non-working foremen and persons above the rank of non-working foreman." (12 employees in the unit).

5888-74-R: Local Union 71 of the United Association of Journeymen and Apprentices of The Plumbing and Pipe Fitting Industry of The United States and Canada (Applicant) v. Rideau Plumbing & Heating Ltd. (Respondent).

Unit: "all plumbers and plumbers' apprentices, steamfitters and steamfitters' apprentices in the employ of the respondent in the Regional Municipality of Ottawa - Carleton and the United Counties of Prescott and Russell, save and except non-working foremen and persons above the rank of non-working foreman." (6 employees in the unit). (FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT WELDERS ENGAGED IN PLUMBING OR STEAMFITTING ARE INCLUDED IN THE BARGAINING UNIT.).

Applications Certified Subsequent to Pre-Hearing Vote

5234-73-R: Canadian Union of Public Employees (Applicant) v. Borough of York Board of Education (Respondent).

Unit: "all office, clerical and technical employees of the respondent employed in the Borough of York save and except foremen and persons above the rank of foreman, Assistant Supervisor of Operations and persons above that rank, secretaries to the Controller of Plant, Assistant Controller of Plant, and Supervisor of Operations, Personnel officer, Personnel clerk and the secretary to the Personnel Officer, accountant and persons above that rank, secretary to the Chief Accountant, employees

in the General Business Administration Office except permit secretary, Assistant Purchasing Agent and persons above the rank, secretary to the Purchasing Agent, and print room operator, Manager of Computer Services Department and Sr. Program Analyst, Administrative Assistants in schools and Head Secretaries in schools, students on co-operative training programmes, Librarian, secretary to the Director of Education, Attendance Counsellors, Supervisor of Distribution, Co-ordinators, Consultants, Psychologists and Social Workers, Lay Assistants, secretaries to Superintendent of Programme, Superintendent of Instruction and Assistant Superintendent of Instruction (Academic Personnel), persons covered by the subsisting collective agreement between the Respondent and CUPE Local 994, students employed during the school vacation period, persons regularly employed for not more than twenty-four hours per week and Lifeguards." (304 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Number of names of persons on revised voters' list		170
Number of persons who cast ballots	160	
Ballots segregated and not counted	39	
Number of spoiled ballots	1	
Number of ballots marked in favour of applicant	65	
Number of ballots marked against applicant	55	

5458-74-R: Graphic Arts International Union Ottawa Local 173B (Applicant) v. Mortimer Ltd. A Division of Lawson Paper Converters Ltd. (Respondent) v. Local 224, Graphic Arts International Union (Intervener).

Unit: "all employees of the respondent at Ottawa, save and except foremen, persons above the rank of foreman, office and sales staff and persons covered by subsisting collective agreements between the respondent and Graphic Arts International Union Local 224 and Graphic Arts International Union Local 173B Ottawa." (39 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR PURPOSES OF CLARITY, "THOSE PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS" ARE DEFINED AS: (A) PERSONS EMPLOYED IN THE LITHOGRAPHIC PREPARATORY AND PRESSROOM DEPARTMENTS REPRESENTED BY GRAPHIC ARTS INTERNATIONAL UNION LOCAL 224 OTTAWA. (B) PERSONS EMPLOYED AS BINDERY EMPLOYEES REPRESENTED BY GRAPHIC ARTS INTERNATIONAL UNION LOCAL 173B OTTAWA.).

Number of names of persons on revised voters' list		30
Number of persons who cast ballots	26	
Number of ballots marked in favour of applicant	26	
Number of ballots marked in favour of intervener	0	

5602-74-R: International Woodworkers of America (Applicant) v. R Huber & Co. Canada Ltd. (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office and sales staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (83 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Number of names of persons on revised voters' list		79
Number of persons who cast ballots		72
Number of spoiled ballots	1	
Number of ballots marked in favour of applicant	50	
Number of ballots marked against applicant	21	

Applications Certified Subsequent to Post-Hearing Vote

4596-73-R: Canadian Union of Public Employees (Applicant) v. York County Board of Education (Respondent) v. Group of Employees (Objectors).

Unit: "all office, clerical and technical employees of the respondent, save and except supervisors, persons above the rank of supervisor, executive assistant to the Director of Education, Communication officer, Supervisor of Systems, Planner, Psychologist, Accountant, Testing Co-ordinator, Attendance Counsellors, secretaries to the Director of Education, Associate Director of Education, Superintendent of Planning and Development, Superintendent of Business, Assistant Superintendent of Business - Plant and Sites, Personnel Officer, Superintendent of Operations, Superintendents of Areas, students employed during the school vacation period, persons covered by a subsisting collective agreement, and teachers as defined in the Teaching Profession Act." (303 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE FOLLOWING PERSONS ARE EXCLUDED FROM THE BARGAINING UNIT: PAYROLL SUPERVISOR, A. V. SUPERVISOR, ACCOUNTING SUPERVISOR, ASSISTANT SUPERVISOR OF MAINTENANCE, ATTENDANCE COUNSELLORS, SECRETARIES TO SUPERINTENDENTS OF AREAS, TESTING CO-ORDINATOR, SUPERVISOR OF CONSTRUCTION, SECRETARY TO SUPERINTENDENT OF PLANNING AND DEVELOPMENT, SECRETARY TO SUPERINTENDENT OF BUSINESS, SECRETARY TO ASSISTANT SUPERINTENDENT OF BUSINESS - PLANT AND SITES, PSYCHOLOGISTS, SENIOR BUYER, COMMUNICATIONS OFFICER, EXECUTIVE ASSISTANT TO THE DIRECTOR OF EDUCATION, SECRETARY TO SUPERINTENDENT OF OPERATIONS, SECRETARY TO DIRECTOR OF EDUCATION, SUPERVISOR OF SYSTEMS, SECRETARY TO PERSONNEL OFFICER, PLANNER (WHICH IS DEFINED TO INCLUDE ALL THOSE WHO PERFORM DUTIES AND RESPONSIBILITIES PRESENTLY PERFORMED BY THE PLANNER) AND SCHOOL OFFICE

SUPERVISOR (WHICH IS DEFINED AS HEAD SECRETARIES IN SCHOOLS EMPLOYING THE EQUIVALENT OF MORE THAN 6 FULL TIME OFFICE AND CLERICAL STAFF INCLUDING THE HEAD SECRETARY) 4. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE FOLLOWING PERSONS ARE INCLUDED IN THE BARGAINING UNIT: TEACHERS AIDES AND HEAD SECRETARIES IN SCHOOLS EMPLOYING THE EQUIVALENT OF 6 OR LESS FULL TIME OFFICE AND CLERICAL STAFF INCLUDING THE HEAD SECRETARY.).

Number of names of persons on revised voters' list		273
Number of persons who cast ballots	267	
Ballots segregated and not counted	44	
Number of spoiled ballots	2	
Number of ballots marked in favour of applicant	142	
Number of ballots marked against applicant	79	

4923-73-R: Le Syndicat des Employés du Manoir Laurier Lté (C.S.N.) (The Union of Laurier Manor Ltd. Employees (C.N.T.U.) (Applicant) v. Laurier Manor Limited (Respondent) v. Group of Employees (Objectors).

Unit #1: "all employees of the respondent at Ottawa save and except registered graduate nurses, office staff, maintenance supervisor, dietary supervisor, recriologist, department heads, persons above the rank of department head, students employed during the school vacation period and persons regularly employed for not more than twenty-four hours per week." (77 employees in the unit).

Number of names of persons on revised voters' list		71
Number of persons who cast ballots	49	
Number of spoiled ballots	2	
Number of ballots marked in favour of applicant	27	
Number of ballots marked against applicant	20	

(BARGAINING UNIT #2 - SEE APPLICATION FOR CERTIFICATION DISMISSED - NO VOTE CONDUCTED).

5114-73-R: Canadian Union of Public Employees (Applicant) v. The Board of Education for the Borough of Scarborough (Respondent).

Unit: "all employees of the respondent regularly employed for not more than twenty-four hours per week and students employed during the school vacation period, save and except foremen and supervisors, those above the rank of foreman and supervisor, office, clerical and technical staff, and all employees covered under subsisting collective agreements." (336 employees in the unit). (FOR

PURPOSES OF CLARITY, THE BOARD NOTED THAT THE EMPLOYEES AFFECTED BY THE INSTANT APPLICATION PERTAIN TO PERSONS EMPLOYED IN THE OPERATIONS AND MAINTENANCE DIVISIONS OF THE RESPONDENT'S PLANT OPERATIONS.).

Number of names of persons on revised voters' list		299
Number of persons who cast ballots	275	
Number of spoiled ballots	4	
Number of ballots marked in favour of applicant	243	
Number of ballots marked against applicant	28	

5309-73-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. C & C Yachts Manufacturing Limited (Respondent) v. C & C Yachts Manufacturing Limited Employees' Association (Intervener) v. Group of Employees (Objectors).

Unit: "all employees of the respondent employed at its plant in Niagara-on-the-Lake, Ontario, save and except foremen, persons above the rank of foreman, office, stock and sales staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period or on a co-operative basis." (148 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Number of names of persons on revised voters' list		168
Number of persons who cast ballots	156	
Number of spoiled ballots	2	
Number of ballots marked in favour of applicant	115	
Number of ballots marked in favour of intervener	39	

5391-73-R: Canadian Union of Public Employees (Applicant) v. Metropolitan Toronto Library Board (Respondent).

Unit: "all employees of the respondent regularly employed for not more than twenty-four hours per week, save and except professional librarians, persons included in the bargaining unit represented by the Canadian Union of Public Employees, Local 1003, and persons included in the bargaining unit represented by the Canadian Union of Public Employees, Local Union 1582." (78 employees in the unit).

Number of names of persons on revised voters' list		23
Number of persons who cast ballots	23	
Number of ballots marked in favour of applicant	19	
Number of ballots marked against applicant	4	

5393-73-R: Amalgamated Transit Union, Local Division 107 (Applicant) v. John Ruicci and Eugene Fortin, carrying on business as Metro Niagara Transit (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent engaged as bus drivers in the operation of the Welland Transit operated for the City of Welland, save and except foremen and persons above the rank of foreman." (22 employees in the unit).

Number of names of persons on voters' list		22
Number of persons who cast ballots	19	
Number of ballots marked in favour of applicant	10	
Number of ballots marked against applicant	9	

5399-73-R: Graphic Arts Union, Local 669, Subordinate to the International Printing and Graphic Communications Union (Applicant) v. The Spectator, a Division of Southam Press Limited (Respondent).

Unit: "all employees of the respondent in its circulation department in Hamilton, save and except foremen, persons above the rank of foreman, office, clerical and sales staff, persons regularly employed for not more than twenty-four hours per week, and students employed during the school vacation period." (65 employees in the unit).

Number of names of persons on revised voters' list		47
Number of persons who cast ballots	46	
Number of ballots marked in favour of applicant	31	
Number of ballots marked against applicant	15	

5459-74-R: Ontario Nurses' Association (Applicant) v. Lake of the Woods District Hospital (Respondent).

Unit #2: "all registered and graduate nurses employed by the respondent at Kenora engaged in a nursing capacity regularly employed for not more than 24 hours per week, save and except head nurses, persons above the

rank of head nurse, director of registered nursing assistants' training centre, and in-service co-ordinator." (10 employees in the unit).

Number of names of persons on revised voters' list		16
Number of persons who cast ballots	16	
Number of ballots marked in favour of applicant	15	
Number of ballots marked against applicant	1	

(BARGAINING UNIT #1 - SEE BARGAINING UNITS CERTIFIED - NO VOTE CONDUCTED).

5472-74-R: Brewery, Soft Drink, Distillery, Distributors & Miscellaneous Workers, Local 1000 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Gilbey Canada Limited (Respondent) v Distillery Local 356, The International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America - C.L.C. and The International Union of United Brewery, Flour, Cereal, Soft Drink & Distillery Workers of America - C.L.C. (Intervener).

Unit: "all employees of the respondent company in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office, sales and laboratory staff, operating engineers and cafeteria staff." (155 employees in the unit). (FOR PURPOSES OF CLARITY THE BOARD NOTED THAT STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD ARE INCLUDED IN THE APPROPRIATE BARGAINING UNIT.).

Number of names of persons on revised voters' list		152
Number of persons who cast ballots	138	
Number of ballots marked in favour of applicant	113	
Number of ballots marked in favour of Intervener	25	

5498-74-R: International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, U.A.W. (Applicant) v. Bay State Abrasives Division Dresser Industrial Products, Ltd. (Respondent) v. Group of Employees (Objectors).

Unit: "all office and clerical employees of the respondent at Brantford, save and except supervisors, persons above the rank of supervisor, confidential secretary to the manager and comptroller, and employees covered by a subsisting collective agreement between the applicant and the respondent." (11 employees in the unit).

Number of names of persons on voters' list		11
Number of persons who cast ballots	11	
Number of ballots marked in favour of applicant	6	
Number of ballots marked against applicant	5	

5500-74-R: Ontario Nurses' Association (Applicant) v. The Port Hope and District Hospital (The Port Hope Hospital Trust) (Respondent).

Unit #2: "all registered and graduate nurses engaged in a nursing capacity who are regularly employed for not more than twenty-four hours per week by the respondent at Port Hope, save and except head nurses and persons above the rank of head nurse." (20 employees in the unit).

Number of names of persons on revised voters' list		20
Number of persons who cast ballots	17	
Ballots segregated and not counted	1	
Number of ballots marked in favour of applicant	13	
Number of ballots marked against applicant	3	

(BARGAINING UNIT #1 - SEE BARGAINING UNITS CERTIFIED - NO VOTE CONDUCTED).

5532-74-R: The University of Guelph Staff Association (Applicant) v The University of Guelph (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent employed or normally performing a major part of their work at its campus at Guelph, engaged in clerical or stenographic pursuits, or performing duties as technicians or their assistants, or performing agricultural duties in the Ontario Veterinary College or in the Horticulture Department of the Ontario Agricultural College, save and except: (1) Members of the University faculty; (2) All persons employed in the Directorate of Personnel; (3) Secretaries to academic and administrative department heads and to persons above those ranks; (4) All persons employed in the Payroll Section of the Chief Account's department; (5) All persons employed in the Bursar's office; (6) All persons employed in administrative electronic data processing and its ancillary services; (7) All persons employed in a professional capacity in the fields of engineering, accounting, purchasing, library science, administration, medicine, nursing and student counselling; (8) Administrative and executive assistants to department heads or persons above that level; (9)

Engineering assistants, field co-ordinators, and persons above those levels in the Directorate of Physical Resources; (10) All persons employed in the offices of the President, Vice-President, Academic and Vice-President, Administration; (11) All persons paid from trust funds and grants; (12) All persons regularly employed for not more than 24 hours per week; (13) Students; (14) The supervising and confidential clerk in the office of the Dean of the College of Family and Consumer Studies; (15) The confidential clerk in the Department of Animal and Poultry Science and in any other department where the personnel strength is greater than 50 and such appointment is deemed necessary by the University; (16) Sports coaches in the School of Physical Education; (17) Persons covered by the Ontario Labour Relations Board's certificate dated December 15, 1965, issued to the Canadian Guards Association; (18) Persons covered by the Ontario Labour Relations Board's certificate dated December 15, 1965, issued to the Canadian Union of Operating Engineers; and (19) Supervisors and persons above the rank of supervisor including but not limited to the following: - (a) machine room supervisor, Department of Animal & Poultry Science; (b) switchboard supervisor; (c) supervising clerk, Registrar's office; (d) agricultural supervisor, Department of Horticultural Science; (e) two supervising technicians, Department of Horticultural Science; (f) supervising technicians, Department of Animal & Poultry Science; (g) agricultural supervisors and supervising technicians, Department of Biomedical Sciences; (h) agricultural supervisor, Department of Clinical Studies; (i) agricultural supervisor, Department of Pathology; (j) supervising technician, Department of Clinical Studies; (k) supervising agricultural worker, Department of Nutrition; (l) supervising technician, Department of Veterinary Microbiology & Immunology; and (m) supervising technician, Department of Microbiology. (848 employees in the unit).

Number of names of persons on revised voters' list		751
Number of persons who cast ballots	410	
Ballots segregated and not counted	1	
Number of spoiled ballots	1	
Number of ballots marked in favour of applicant	354	
Number of ballots marked against applicant	54	

5595-74-R: Canadian Union of Public Employees (Applicant) v. Cochrane Nursing Home Limited (Respondent).

Unit: "all employees of the respondent at Hearst regularly employed for not more than 24 hours per week and students employed during the school vacation period, save and except professional medical staff, graduate nursing staff, undergraduate nurses, graduate pharmacists, undergraduate pharmacists, graduate dieticians, student dieticians, technical personnel,

supervisors, persons above the rank of supervisor and office staff." (31 employees in the unit). (THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT CHARGE NURSES ARE EXCLUDED FROM THE BARGAINING UNIT AS HOLDING A POSITION EQUIVALENT TO THE RANK OF SUPERVISOR.).

Number of names of persons on voters' list		15
Number of persons who cast ballots	8	
Number of ballots marked in favour of applicant	8	
Number of ballots marked against applicant	0	

APPLICATIONS FOR CERTIFICATION DISMISSED DURING JUNE

No Vote Conducted

18378-70-R: The Canadian Union of Construction Workers (Applicant) v. The Marble Tile and Terrazzo Union, Local 31 The Toronto Building and Construction Trades Council (Respondents) v. The Metropolitan Toronto Apartment Builders' Association; Gem-Campbell Terrazzo Tile; Sterling Tile Company; B. Moscone Tile Co. Ltd.; Tilerite Limited; Speedy Tile & Carpet Contractors; Vatri Marble Tile and Terrazzo Company; (Bloor Terrazzo Tile & Mosaic Ltd.; Continental Terrazzo Marble; Mercurry Tile - Terrazzo Ltd.; Paolini Tile & Marble Co Ltd.; Derby Terrazzo & Tile Marble Co.; Granita Tile Co.; Lancia Tile Co.; Perfect Tile Co.; Time Terrazzo Tile Co.; New Way Terrazzo Ltd.; S.M. Tile Co.; Antonio Santarossa Tile Co.; Boyd Leckie Ltd.; Polmar Tile Co.; Trent Flooring and Supply Ltd.; Etobicoke Terrazzo and Tile Co.) (Intervenors). (48 employees).

2604-72-R: Labour Bureau of the Painting and Decorating Contractors of Ontario (Applicant) v. Ontario Council of the International Brotherhood of Painters and Allied Trades (Respondent) v. The Painting Section of the Windsor Construction Association (Intervener). (no employees).

2687-72-R: Labour Bureau of the Painting and Decorating Contractors of Ontario (Applicant) v. Ontario Council of the International Brotherhood of Painters and Allied Trades (Respondent). (no employees).

4784-73-R: Amalgamated Clothing Workers of America (Applicant) v. Dylex Limited (Respondent).

Unit: "all employees of the respondent at 637 Lakeshore Boulevard, Toronto, save and except supervisors, persons above the rank of supervisor, office and clerical staff, persons regularly employed for not more than 24 hours per week, students employed during the school

vacation period, and employees covered by collective agreements with the Toronto Joint Board Amalgamated Clothing Workers of America and with the International Ladies' Garment Workers Union and the Toronto Joint Board of the International Ladies' Garment Workers Union " (174 employees in the unit). (HAVING REGARD TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER, THE SUBMISSIONS OF THE PARTIES).

4923-73-R: Le Syndicat des Employees du Manoir Laurier Ltd (C.S.N.) (The Union of Laurier Manor Ltd. Employees (C.N.T.U.) (Applicant) v. Laurier Manor Limited (Respondent) v. Group of Employees (Objectors).

Unit #2: "all employees of the respondent regularly employed for not more than twenty-four hours per week." (26 employees in the unit).

(BARGAINING UNIT #1 - SEE APPLICATION CERTIFIED SUBSEQUENT TO POST-HEARING VOTE).

5191-73-R: Retail, Wholesale and Department Store Union, AFL:CIO:CLC (Applicant) v. Consumers Distributing Company Limited (Respondent) v. Group of Employees (Objectors). (317 employees).

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5211-73-R: Building Service Employees International Union Local 478, Affiliated with A.F. of L., C.I.O., C.L.C. (Applicant) v. Cochrane Nursing Home Limited (Respondent) v. Cikent Corporation Limited (Intervener) v. Group of Employees (Objectors).

- and -

5212-73-R: Building Service Employees International Union Local 478, Affiliated with A.F. of L., C.I.O., C.L.C. (Applicant) v. Cochrane Nursing Home Limited (Respondent) v. Cikent Corporation Limited (Intervener) v. Group of Employees (Objectors).

Unit #3: "all employees of the respondent at The Chateau Nursing Home located on Chateau Drive, at Kirkland Lake, save and except professional nursing staff, physio-therapist, occupational therapist, supervisors, persons above the rank of supervisor, office staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (16 employees in the unit) (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Unit #4: "all employees of the respondent regularly employed for not more than twenty-four hours per week at The Chateau Nursing Home located on Chateau Drive, at Kirkland Lake, save and except professional nursing staff, physio-therapist, occupational therapist, supervisors, persons above the rank of supervisor, and office staff." (12 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(BARGAINING UNIT #1 & #2 - SEE BARGAINING UNITS CERTIFIED - NO VOTE CONDUCTED).

5591-74-R: Service Employees Union, Local 210 (affiliated with Service Employees International Union AFL-CIO, CLC) (Applicant) v. The Metropolitan General Hospital (Respondent). (6 employees).

5606-73-R: Auxilliary Administrative Staff Employed by the Kent County Board of Education (Applicant) v. Kent County Board of Education (Respondent). (113 employees).

5618-74-R: Local Union 1190, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Valentins Carpentry Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (15 employees in the unit).

5640-74-R: United Brotherhood of Carpenters and Joiners of America, Local Union 1669 (Applicant) v. Macaw and MacDonald Limited (Respondent). (3 employees).

5652-74-R: Teamsters International Union Local 990 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. North Shore Supply Co. Ltd. (Respondent). (7 employees).

5695-74-R: United Brotherhood of Carpenters and Joiners of America, Local Union 1669 (Applicant) v. Turzillo Contracting Ltd. (Respondent). (2 employees).

5698-74-R: United Brotherhood of Carpenters and Joiners of America, Local Union 1669 (Applicant) v. Florent Champagne (Respondent). (2 employees).

5708-74-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. Northern Wood Home Canadian Limited (Respondent) v. Group of Employees (Objectors). (2 employees).

5714-74-R: Labourers' International Union of North America Local Union 493 (Applicant) v. Ken Bunyak's Bus Lines (Respondent). (28 employees).

5812-74-R: Advanced Extrusions Employee's Association (Applicant) v. Advanced Extrusions Limited (Respondent). (158 employees).

5838-74-R: International Union of Operating Engineers, Local 793 (Applicant) v. Tackle Construction Limited (Respondent). (2 employees).

5839-74-R: International Brotherhood of Painters and Allied Trades, Local 205 (Applicant) v. Niagara South Board of Education (Respondent) v. Canadian Union of Public Employees (Intervener). (6 employees)

Certification Dismissed Subsequent to Pre-Hearing Vote

5101-73-R: International Union of Operating Engineers, Local 793 (Applicant) v. J. F. Marshall and Sons Limited (Respondent) v. United Cement, Lime and Gypsum Workers International Union (Intervener).

Voting Constituency: "All employees of the respondent at its three pits located in the Township of London, in the County of Middlesex, save and except foremen, persons above the rank of foreman, dispatchers, highway truck drivers, office and sales staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (16 employees). (THE BOARD DIRECTED THAT THE BALLOT BOX CONTAINING ALL THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE BE SEALED AND THE BALLOTS NOT COUNTED PENDING THE FURTHER DIRECTION OF THE BOARD.).

Number of names of persons on revised voters' list		11
Number of persons who cast ballots	11	
Number of spoiled ballots	1	
Number of ballots marked in favour of applicant	3	
Number of ballots marked against applicant	7	

5163-73-R: Association of Commercial and Technical Employees, Local 1704, (C.L.C.) (Applicant) v. United States Fidelity and Guaranty Company (Respondent) v. William D. O'Hara (Intervener).

Voting Constituency: "All office and technical employees of the respondent at Metropolitan Toronto, save and except the Supervisor of the Records Department, Assistant Superintendents and persons above the rank of Assistant Superintendent, the Secretary to the General Manager and students employed during the school vacation period." (107 employees)

Number of names of persons on revised voters' list		98
Number of persons who cast ballots	98	
Number of spoiled ballots	1	
Number of ballots marked in favour of applicant	32	
Number of ballots marked against applicant	65	

5424-73-R: Teamsters Union, Local 938 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Gen-Auto Shippers (Oshawa) Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all office and clerical employees of the respondent at Oshawa, save and except assistant manager and persons above the rank of assistant manager, confidential secretary to the general manager, students employed during the school vacation period and yard supervisors." (20 employees in the unit).

Number of names of persons on voters' list		16
Number of persons who cast ballots	16	
Number of ballots marked in favour of applicant	5	
Number of ballots marked against applicant	11	

5480-74-R: International Union of Electrical, Radio and Machine Workers AFL, CIO, CLC (Applicant) v. G. T. E. Automatic Electric (Canada) Ltd. (Respondent).

Voting Constituency: "All office, clerical and technical employees of the respondent at Brockville, save and except assistant foremen and assistant supervisors, persons above the rank of assistant foremen and assistant supervisors, outside service personnel, specialists, purchasing agents, salesmen and sales representatives, nurses and nursing assistant, time study technicians, secretaries, confidential stenographers, designated accounting and payroll clerks, financial analysts, financial coordinators, budget coordinators, typing pool coordinators, graduate engineers, factory skills instructors, auxiliary machine operators, persons regularly employed for not more than 24 hours per week, students employed during the school vacation period, students hired on a cooperative training basis with schools and universities, and trainees on a graduate training program." (450 employees). (FOR THE PURPOSE OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT "OUTSIDE SERVICE PERSONNEL" REFERS TO FIELD SERVICE PERSONNEL REGULARLY EMPLOYED AWAY FROM BROCKVILLE MORE THAN 50% OF THE TIME.).

Number of names of persons on revised voters' list		360
Number of persons who cast ballots	334	
Number of ballots marked in favour of applicant	128	
Number of ballots marked against applicant	206	

5534-74-R: Teamsters, Chauffeurs, Warehousemen and Helpers Local 141 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. St. Thomas Concrete Ltd. (Respondent)

Voting Constituency: "All employees of the respondent at St. Thomas, Ontario save and except foremen dispatchers, those above the rank of foreman and dispatcher, office and sales staff." (13 employees).

Number of names of persons on voters list		15
Number of persons who cast ballots	14	
Number of spoiled ballots	1	
Number of ballots marked in favour of applicant	3	
Number of ballots marked against applicant	10	

5574-74-R: Local Union 387, International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America - C.L.C. (Applicant) v. Canada Dry Limited (Respondent).

Voting Constituency: "All employees of the respondent employed in Metropolitan Toronto, save and except foremen and supervisors, persons above the rank of foreman and supervisor, advance salesmen, driver merchandisers, driver merchandiser helpers, salesmen, despatchers, telephone sales clerks, office staff, employees in the extract department and quality control department, students employed during the school vacation period and persons regularly employed for not more than twenty-four hours per week." (119 employees).

Number of names of persons on revised voters' list		112
Number of persons who cast ballots	109	
Number of ballots marked in favour of applicant	44	
Number of ballots marked against applicant	65	

5604-74-R: Canadian Union of Public Employees (Applicant) v. Oshawa Clinic Limited (Respondent).

Voting Constituency #1: "All registered nurses employed by the respondent in Oshawa, Ontario, save and except department head, persons above the rank of department head and office and sales staff." (22 employees).

Number of names of persons on voters' list		12
Number of persons who cast ballots	12	
Number of spoiled ballots	1	
Number of ballots marked in favour of applicant	3	
Number of ballots marked against applicant	8	

Voting Constituency #2: "All registered nurses employed by the respondent in Oshawa, Ontario, regularly employed for not more than twenty-four hours per week, save and except department head, persons above the rank of department head and office and sales staff." (10 employees).

Number of names of persons on voters' list		14
Number of persons who cast ballots	12	
Number of spoiled ballots	1	
Number of ballots marked in favour of applicant	2	
Number of ballots marked against applicant	9	

5722-74-R: International Woodworkers of America (Applicant) v. The Hepworth Furniture Co. Ltd. (Respondent).

Voting Constituency: "All employees of the Hepworth Furniture Co. Ltd., Southampton, Ontario, save and except foremen, persons above the rank of foreman, office and sales staff, persons regularly employed for not more than twenty-four hours per week, and students employed during the school vacation period." (77 employees).

Number of names of persons on revised voters' list		73
Number of persons who cast ballots	70	
Number of ballots marked in favour of applicant	31	
Number of ballots marked against applicant	39	

Certification Dismissed Subsequent to Post-Hearing Vote

5466-74-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. Modern Exposaic Co. Ltd. (Respondent).

Unit: "all employees of the respondent employed at its Plant in Niagara Falls, Ontario, save and except foremen, persons above the rank of foreman, office and sales staff." (17 employees in the unit).

Number of persons on revised voters' list		9
Number of persons who cast ballots	9	
Number of ballots marked in favour of applicant	1	
Number of ballots marked against applicant	8	

5474-74-R: Canadian Union of Public Employees (Applicant) v. Oshawa Clinic Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent in Oshawa, save and except supervisors, persons above the rank of supervisor, secretary to the Administrator, registered and graduate nurses, graduate physiotherapists and graduate pharmacists, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (71 employees in the unit). (...THE BOARD ALSO NOTES THE AGREEMENT OF THE PARTIES THAT EVEN IF PERSONS EMPLOYED IN THE PHARMACY DEPARTMENT ARE EMPLOYEES OF THE RESPONDENT, THESE PERSONS WOULD NOT SHARE A COMMUNITY OF INTEREST WITH OTHER EMPLOYEES FOUND TO BE INCLUDED IN THE APPROPRIATE UNIT HEREIN.).

Number of names of persons on revised voters' list		68
Number of persons who cast ballots	66	
Ballots segregated and not counted	1	
Number of spoiled ballots	1	
Number of ballots marked in favour of applicant	20	
Number of ballots marked against applicant	44	

5603-74-R: Local Union 1190, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Rosa Carpentry (Respondent) v. Group of Employees (Objectors).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (6 employees in the unit).

Number of names of persons on voters' list		8
Number of persons who cast ballots	5	
Number of spoiled ballots	2	
Number of ballots marked in favour of applicant	0	
Number of ballots marked against applicant	3	

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING JUNE

3857-73-R: Canadian Food and Allied Workers Local Union 633, Chartered by The Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC (Applicant) v. Darrigo's Supermarkets Limited and Willow Farms Fruit Limited (Respondent). (23 employees).

5409-73-R: International Union, United Plant Guard Workers of America Local 1962 (Applicant) v. York University (Respondent) v. International Union of Operating Engineers Local 796 (Intervener). (no employees).

5711-74-R: The International Association of Bridge, Structural and Ornamental Ironworkers, Local 736 (Applicant) v. Wellington Welderies Limited (Respondent). (2 employees).

5733-74-R: Labourers International Union of North America, Local 837 (Applicant) v. E. S. Martin Construction Ltd. (Respondent). (9 employees).

5748-74-R: United Brotherhood of Carpenters and Joiners of America, Local 2486 (Applicant) v. Tackle Construction Ltd. (Respondent). (6 employees).

5771-74-R: Canadian Union of Public Employees (Applicant) v. The Toronto Western Hospital (Respondent) v. Canadian Union of General Employees (Intervener). (603 employees).

5772-74-R: The United Brotherhood of Carpenters and Joiners of America, Local 1669 (Applicant) v. Harli Construction Ltd. (Respondent). (2 employees).

5794-74-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. Buset Bros. Contracting Ltd. (Respondent). (12 employees).

5795-74-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. J. Felkai Construction Limited, Box 730, Lively, Ontario (Respondent) v. United Brotherhood of Carpenters and Joiners of America, Local 2486 (Intervener). (2 employees).

5831-74-R: Shopmen's Local Union No 757 of the International Association of Bridge, Structural and Ornamental Iron Workers (Applicant) v. Templeton and Sons Metal Products Limited (Respondent). (12 employees).

5842-74-R: The Canadian Union of Public Employees (Applicant) v. The Pembroke General Hospital (Respondent). (no employees).

5848-74-R: Welland Typographical Union No. 927 (Applicant) v. The Evening Tribune (Welland) (Respondent). (30 employees).

5920-74-R: Canadian Food and Allied Workers Local Union 725, Chartered by the Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC (Applicant) v. Sayvette Limited (Respondent). (65 employees).

APPLICATIONS FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING

JUNE

4924-73-R: Green Giant of Canada Limited (Applicant) v. Local 278 International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America, C.L.C. (Respondent #1) v. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Respondent #2). (TERMINATED).

5731-74-R: Local Union 636, International Brotherhood of Electrical Workers, A.F.L.-C.I.O.-C.L.C. (Applicant) v. The Acton Hydro Electric Commission (Respondent). (GRANTED).

5732-74-R: Local Union 636, International Brotherhood of Electrical Workers A.F.L.-C.I.O.-C.L.C. (Applicant) v. The Public Utilities Commission of the City of Barrie (Respondent). (GRANTED).

5773-74-R: United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 67 (Applicant) v. Honeywell Limited (Respondent). (GRANTED).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING

JUNE

5673-74-U: Patchogue: Plymouth - Hawkesbury Mills A Division of Amoco Canada Petroleum Co. Ltd. (Applicant) v. Francois Parisien, et al., (certain employees of the Applicant) (Respondents). (DISMISSED).

5674-74-U: Patchogue: Plymouth - Hawkesbury Mills A Division of Amoco Canada Petroleum Co. Ltd. (Applicant) v. Thomas Boucher, et al., (certain employees of the Applicant) (Respondents). (DISMISSED).

5675-74-U: Patchogue: Plymouth - Hawkesbury Mills A Division of Amoco Canada Petroleum Co. Ltd. (Applicant) v. Pierre Lauzon, et al., (certain employees of the Applicant) (Respondents). (DISMISSED).

5684-74-U: Patchogue: Plymouth - Hawkesbury Mills A Division of Amoco Canada Petroleum Co. Ltd. (Applicant) v. Guy Larocque, et al., (certain employees of the Applicant) (Respondents). (DISMISSED).

5717-74-U: Carpenters District Council of Toronto and Vicinity on Behalf of Locals 27, 666, 681, 1133, 1963, 3227 & 3233 of the United Brotherhood of Carpenters & Joiners of America (Applicant) v. ICR Developments Limited, Cleveland Drywall Limited, K & F Store Fixtures Limited (Respondents). (DIRECTION).

5760-74-U: Albert Sankarlal (Applicant) v. Canadian Union of Public Employees and its Local 2001 (Respondent). (WITHDRAWN).

5780-74-U: Sehl Engineering Limited (Applicant) v. Robert MacMillan, et al (see attached Schedules A, B, and C) (Respondents). (WITHDRAWN).

5789-74-U: Sehl Engineering Limited (Applicant) v. International Union, United Automobile Aerospace and Agricultural Implement Workers of America, UAW, and its Local Union No. 1524 (Respondent). (WITHDRAWN).

5832-74-U: Aselford-Martin Limited (Applicant) v. Labourers International Union of North America, Local 527 and B. Carrozzi (Respondents). (WITHDRAWN).

5849-74-U: Consolidated Textiles Ltd. (Applicant) v. A. Robinson, et al (Respondents). (WITHDRAWN).

5863-74-U: Aselford-Martin Limited (Applicant) v. Labourers International Union of North America, Local 527 and B. Carrozzi and Henry Roy (Respondents). (DISMISSED).

APPLICATIONS FOR DECLARATION THAT LOCK-OUT UNLAWFUL DISPOSED OF DURING

JUNE

4632-73-U: International Association of Machinists and Aerospace Workers (Applicant) v. Fleetwood Corporation (Respondent). (DISMISSED).

5737-74-U: Upholsterers' International Union of North America, AFL-CIO-CLC, Local 50 (Applicant) v. Sklar Furniture Limited (Respondent). (DISMISSED).

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APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING JUNE

4106-73-U: Canadian Food & Allied Workers Local P-746 (Applicant) v. The Norfolk Fruit Growers Association (Respondent). (DISMISSED)

5535-74-U: Toronto Newspaper Guild (Applicant) v. C C H Canadian Limited (Respondent). (GRANTED).

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5551-74-U: Langs Foods Limited (Applicant) v. Warehousemen and Miscellaneous Drivers Local Union 419, Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Respondent).

- and -

5552-74-U: Langs Foods Limited (Applicant) v. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) Local 525 (Respondent). (WITHDRAWN).

5676-74-U: Patchogue: Plymouth - Hawkesbury Mills A Division of Amoco Canada Petroleum Co. Ltd. (Applicant) v. Thomas Boucher et al (certain employees of the Applicant) (Respondents). (WITHDRAWN).

5677-74-U: Patchogue: Plymouth - Hawkesbury Mills A Division of Amoco Canada Petroleum Co. Ltd. (Applicant) v. Pierre Lauzon et al (certain employees of the Applicant) (Respondents). (WITHDRAWN).

5678-74-U: Patchogue: Plymouth - Hawkesbury Mills A Division of Amoco Canada Petroleum Co. Ltd. (Applicant) v. Francois Parisien et al (certain employees of the Applicant) (Respondents). (WITHDRAWN).

5693-74-U: Patchogue: Plymouth - Hawkesbury Mills A Division of Amoco Canada Petroleum Co. Ltd. (Applicant) v. Guy Larocque, et al (certain employees of the Applicant) (Respondents). (WITHDRAWN).

5756-74-U: Walter Lumsden (Applicant) v. Canada Dry Limited (Respondent). (WITHDRAWN).

5757-74-U: Walter Lumsden (Applicant) v. Canada Dry Limited (Respondent). (WITHDRAWN).

5758-74-U: Walter Lumsden (Applicant) v. Canada Dry Limited (Respondent). (WITHDRAWN).

5759-74-U: Walter Lumsden (Applicant) v. Canada Dry Limited (Respondent). (WITHDRAWN).

5833-74-U: Labourers' International Union of North America, Local 183 (Applicant) v. The Meridian Building Group Limited carrying on business under the firm name and style of Azteck Technical Services (Respondent). (WITHDRAWN).

5858-74-U: Consolidated Textiles Ltd. (Applicant) v. A. Robinson, and others on attached list (Respondents). (WITHDRAWN).

COMPLAINTS UNDER SECTION 79 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING

JUNE

4550-73-U: Service Employees' Union, Local 204 (Complainant) v. The Heritage Nursing Homes Ltd. (Respondent). (DISMISSED).

5054-73-U: Kenneth Brearley (Complainant) v. McMaster Guards Association (Respondent). (DISMISSED).

5158-73-U: Service Employees' Union, Local 532 (Complainant) v. West Willow Nursing Home (Respondent). (WITHDRAWN).

5189-73-U: Karl Drafczek (Complainant) v. The United Steelworkers of America Local 3767, The Steel Company of Canada, Limited (Respondents). (DISMISSED).

(1974) 2 OLRB M.R. - PAGE 392.

5260-74-U: Ronald G. Lewis (Complainant) v. Local Union 221 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (Respondent) v. Ontario Hydro (Intervener). (DISMISSED).

(1974) 2 OLRB M.R. - PAGE 366.

5271-74-U: Jean-Pierre Lemieux (Complainant) v. International Association of Bridge, Structural and Ornamental Ironworkers, Local 736 (Respondent). (WITHDRAWN).

5319-73-U: Le Syndicat des Employees du Manoir Laurier Ltd (C.S.N.) (Complainant) v. Laurier Manor Limited (Respondent). (WITHDRAWN).

5357-73-U: Christos Dalavangas (Complainant) v. United Electrical, Radio and Machine Workers of America, Local 505 (Respondent). (DISMISSED).

5486-74-U: Ellard E. Resmer (Complainant) v. The Schneiders Employees Association (Respondent). (DISMISSED).

5509-74-U: United Brotherhood of Carpenters and Joiners of America (Complainant) v. Modern Exposiac Co. Ltd. (Respondent). (WITHDRAWN).

5536-74-U: Toronto Photo Engravers Union, Local 35-P, GAIU (Complainant) v. Roto-Tone Gravure Service Limited (Respondent). (DISMISSED).

5579-74-U: United Brotherhood of Carpenters and Joiners of America (Complainant) v. Hashman Construction - Division of Tristar Western Ltd. and Laborers' International Union of North America, Local 607 (Respondents). (WITHDRAWN).

5580-74-U: United Brotherhood of Carpenters and Joiners of America (Complainant) v. Tyndall Development Corporation Limited and Laborers' International Union of North America, Local 607 (Respondents). (WITHDRAWN).

5614-74-U: Parviz Khatib - Zanjani (Complainant) v. Jacobs & Thompson Ltd. (Respondent). (DISMISSED).

5697-74-U: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) (Complainant) v. Automotive Warehousing Limited (Respondent). (WITHDRAWN).

5754-74-U: Tony Mariconda (Complainant) v. Bill Davidson, Carl Matheson and John Chambers (Respondents). (WITHDRAWN).

5755-74-U: James P. Long (Complainant) v. Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 880 (Respondent). (WITHDRAWN).

5781-74-U: Labourers' International Union of North America, Local 183 (Complainant) v. The Meridian Building Group Limited carrying on business under the firm name and style of Azteck Technical Services (Respondent). (WITHDRAWN).

5868-74-U: J. Felkai Construction Limited (Complainant) v. United Brotherhood of Carpenters and Joiners of America, Local 446 (Respondent). (WITHDRAWN).

5878-74-U: Teamsters Local 879 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Complainant) v. George F. Pettinos (Canada) Limited (Respondent). (WITHDRAWN).

APPLICATIONS UNDER SECTION 37(3) DISPOSED OF DURING JUNE

5254-73-M: Oil, Chemical and Atomic Workers International Union, Local 9-599 (Applicant) v. Texaco Canada Limited (Respondent). (DISMISSED).

5255-73-M: Oil, Chemical and Atomic Workers International Union, Local 9-593 (Applicant) v. Regent Refining (Canada) Limited (Port Credit Plant) (Respondent). (DISMISSED).

APPLICATION UNDER SECTION 39 DISPOSED OF DURING JUNE

5725-74-M: Orva J. Hochstetler (Applicant) v. The United Brotherhood of Carpenters & Joiners of America, Local 3054 (Respondent Trade Union) v. Lloyd-Truax Ltd. Wingham, Ontario (Respondent Employer). (DISMISSED).

APPLICATIONS FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

5782-74-M: Local 453 of The International Chemical Workers' Union (Trade Union) v. The Canada Metal Company Ltd., Metal Power Division, and/or Roto-Cast Limited (Employer). (GRANTED).

5792-74-M: The Canadian Union of Operating Engineers and its Local 104 (Trade Union) v. Renold Canada Ltd. (Employer). (GRANTED).

5844-74-M: Canadian Union of Public Employees, Local Union 1532 (Trade Union) v. Port Colborne General Hospital (Employer). (GRANTED).

5849-74-M: Service Employees Union, Local 204 (Trade Union) v. The Baycrest Hospital and/or The Jewish Home for the Aged (Employer). (GRANTED).

5850-74-M: Service Employees Union, Local 204 (Trade Union) v. Clarke Institute of Psychiatry (Employer). (GRANTED).

5851-74-M: Service Employees Union, Local 204 (Trade Union) v. Mount Sinai Hospital (Employer). (GRANTED).

5852-74-M: Service Employees Union, Local 204 (Trade Union) v. Runnymede Hospital (Employer). (GRANTED).

5853-74-M: Service Employees Union, Local 204 (Trade Union) v. The Toronto East General and Orthopaedic Hospital (Employer). (GRANTED).

5854-74-M: Service Employees Union, Local 204 (Trade Union) v. The Toronto Hospital Weston (Employer). (GRANTED).

5855-74-M: Service Employees Union, Local 204 (Trade Union) v. York County Hospital Corporation (Employer). (GRANTED).

5856-74-M: Service Employees Union, Local 204 (Trade Union) v. The Wellesley Hospital (Employer). (GRANTED).

5857-74-M: Service Employees Union, Local 777 (Trade Union) v. Sunnybrook Hospital (Employer). (GRANTED).

APPLICATIONS UNDER SECTION 55 DISPOSED OF DURING JUNE

3128-72-R: Local Union 633 and Local Union 175 Canadian Food and Allied Workers chartered by Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC (Applicant) v. Darrigo's Supermarkets Ltd. (Respondent) v. Busy B. Discount Foods Limited (Intervener). (WITHDRAWN).

4931-73-R: International Brotherhood of Electrical Workers, Local 804 (Applicant) v. Ralph Ford Electrical Contractors Limited, D. Wilson Electrical Ltd. and 275247 Ontario Limited (Respondents) v. Group of Employees (Objectors). (DISMISSED).

(1974) 2 OLRB M.R. - PAGE 388.

5089-73-R: The International Brotherhood of Electrical Workers, Local 636 (Applicant) v. The Regional Municipality of Peel (Respondent) v. Canadian Union of Public Employees; Canadian Union of Public Employees and its Local 831; Canadian Union of Public Employees, Local 1626 (Intervener).

Voting Constituency: "All outside employees in the water and waste division of the Public Works Department of the respondent in the Regional Municipality of Peel save and except non-working supervisors and positions above the rank of non-working supervisors."

Number of names of persons on voters' list		60
Number of persons who cast ballots		60
Number of ballots marked in favour of applicant	53	
Number of ballots marked in favour of intervener	7	

5469-74-R: Local Union 3054, of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. Triple E Canada Ltd., Woodstock, Ontario (Respondent). (WITHDRAWN).

5492-74-R: Canadian Union of Public Employees (Applicant) v. The Regional Municipality of Haldimand-Norfolk (Respondent) v. Group of Employees (Objectors). (GRANTED).

JURISDICTIONAL DISPUTE

5631-74-JD: Labourers' International Union of North America, Local 506 (Complainant) v. International Brotherhood of Electrical Workers, Local 353 and Mollenhauer-Cape and Mississauga Core Drilling (Respondent). (DISMISSED).

APPLICATION FOR DETERMINATION UNDER SECTION 95(2) DISPOSED OF DURINGJUNE

5462-74-M: International Association of Machinists and Aerospace Workers (Applicant) v. Toledo Scale, Division of Reliance Electric Limited (Respondent). (AFFIRMATIVE).

(1974) 2 OLRB M.R. - PAGE 406.

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

4953-73-R: Civil Service Association of Ontario (Inc.) (Applicant) v. The Religious Hospitallers of St. Joseph of the Hotel Dieu at Kingston (Respondent). (REQUEST DENIED).

5633-74-R: Local Union 1190, United Brotherhood of Carpenters and Joiners of America (Applicant) v. S G R Construction Ltd. (Respondent). (REQUEST DENIED).

STATISTICAL TABLES FOR FIRST QUARTER OF FISCAL YEAR 1974-75

TABLE I

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

		Number Filed	
		<u>1st. Quarter</u>	
		<u>April 1, to June 28.</u>	
		<u>1974-75</u>	<u>1973-74</u>
I.	Certification	354	377
II.	Declaration Terminating Bargaining Rights	8	13
III.	Declaration of Successor Status	10	7
IV.	Declaration that Strike Unlawful	33	6
V.	Declaration that Lock-Out Unlawful	1	1
VI.	Consent to Prosecute	39	15
VII.	Complaint of Unfair Practice in Employment (Section 79)	46	63
VIII.	Miscellaneous	<u>49</u>	<u>20</u>
TOTAL		<u>540</u>	<u>502</u>

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

		Number Filed	
		<u>1st. Quarter</u>	
		<u>April 1, to June 28.</u>	
		<u>1974-75</u>	<u>1973-74</u>
Hearings and Continuation of Hearings by the Board		363	357

April to June.

TABLE III

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS
BOARD BY MAJOR TYPES

	<u>Number Disposed of</u>	
	<u>1st. Quarter</u>	
	<u>April 1, to June 28.</u>	<u>1974-75</u>
	<u>1973-74</u>	
I. Certification	374	358
II. Declaration Terminating Bargaining Rights	12	9
III. Declaration of Successor Status	6	9
IV. Declaration that Strike Unlawful	27	7
V. Declaration that Lock-Out Unlawful	2	2
VI. Consent to Prosecute	43	26
VII. Complaint of Unfair Practice in Employment (Section 79)	58	66
VIII. Miscellaneous	<u>39</u>	<u>12</u>
TOTAL	561	489
	<u><u> </u></u>	<u><u> </u></u>

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD BY TYPE
AND DISPOSITION

	<u>Number of Applications</u>		<u>Number of Employees*</u>	
	<u>1st. Quarter</u>		<u>1st Quarter</u>	
	<u>April 1, to June 28.</u>		<u>April 1, to June 28.</u>	
	<u>1974-75</u>	<u>1973-74</u>	<u>1974-75</u>	<u>1973-74</u>
I. <u>Certification</u>				
Granted	258	246	9145	7113
Dismissed	82	76	5525	2796
Withdrawn	<u>34</u>	<u>36</u>	<u>941</u>	<u>817</u>
TOTAL	374	358	15611	10726
	==	==	==	==
II. <u>Termination</u> <u>of Bargaining</u> <u>Rights</u>				
Granted	6	4	191	81
Dismissed	6	5	146	341
Withdrawn	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>
TOTAL	12	9	337	422
	==	=	==	==

*These figures refer to the number of employees directly affected and are based on the number of employees in the bargaining units at the time the applications for certification were filed with the Board. Totals for applications dismissed and withdrawn are approximate.

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD
BY TYPE AND DISPOSITION (CONTINUED)

<u>Number of Applications</u>	
<u>1st. Quarter</u>	
<u>April 1, to June 28.</u>	
<u>1974-75</u>	<u>1973-74</u>

III. Declaration that Strike
Unlawful

Granted	2	-
Dismissed	8	1
Withdrawn	<u>17</u>	<u>6</u>

TOTAL	27	7
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IV. Declaration that Lock-Out
Unlawful

Granted	-	-
Dismissed	2	2
Withdrawn	<u>-</u>	<u>-</u>

TOTAL	2	2
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V. Consent to Prosecute

Granted	2	6
Dismissed	11	6
Withdrawn	<u>30</u>	<u>14</u>

TOTAL	43	26
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VI. Complaint of Unfair
Practice in Employment
(Section 79)

Granted	1	3
Dismissed	31	23
Withdrawn	<u>26</u>	<u>40</u>

TOTAL	58	66
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TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF
BY THE ONTARIO LABOUR RELATIONS BOARD

	Number of Votes	
	<u>1st. Quarter</u>	
	<u>April 1, to June 28.</u>	<u>1974-75</u>
	<u>1973-74</u>	
<u>Certification After Votes*</u>		
Pre-Hearing Vote	11	30
Post-Hearing Vote	32	20
Ballots Not Counted	-	-
<u>Dismissed After Vote</u>		
Pre-Hearing Vote	25	14
Post-Hearing Vote	13	8
Ballots Not Counted	-	1
TOTAL	81	73

*Includes applicant-intervener application in which both applicant and intervener apply for a new unit and either applicant or intervener is certified.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF BY
THE ONTARIO LABOUR RELATIONS

	Number of Votes	
	<u>1st. Quarter</u>	
	<u>April 1, to June 28.</u>	<u>1974-75</u>
	<u>1973-74</u>	
*Respondent Union Successful	1	2
Respondent Union Unsuccessful	6	1
TOTAL	7	3

*In Termination Proceedings where a vote is taken the applicant is a group of employees or the employer; the incumbent union is thus the respondent.

CASE LISTINGS JUNE 1974

	Page
1. Certification	
(a) Bargaining Agents Certified	175
(b) Applications Dismissed	201
(c) Applications Withdrawn	209
2. Applications for Declaration of Successor Status	210
3. Applications for Declaration that Strike Unlawful	210
4. Applications for Declaration that Lock-Out Unlawful	211
5. Applications for Consent to Prosecute	212
6. Complaints under Section 79 (Unfair Labour Practice)	213
7. Applications under Section 37(3)	215
8. Application under Section 39	215
9. Applications for Consent to Early Termination of Collective Agreement	215
10. Applications under Section 55	216
11. Jurisdictional Dispute	217
12. Application for Determination under Section 95(2)	217
13. Applications for Reconsideration of Board's Decision	217

6. The Board is of the view that there is nothing in the Labour Relations Act to deprive employees included in the said special programme of representation for collective bargaining purposes. To accede to the argument made by the respondent would cause the Board to condone unduly the fragmentation of bargaining units. We are equally of the view that the concern of maintaining the special programme is an issue that could be more appropriately dealt with through the negotiating process.

7. The Board is satisfied on the basis of all the evidence before it that not less than thirty-five per cent of the employees of the respondent in the bargaining unit, at the time the application was made, were members of the applicant on February 7, 1974, the terminal date fixed for this application and the date which the Board determines under section 92(2)(j) of The Labour Relations Act to be the time for the purpose of ascertaining membership under section 7(1) of the said Act.

8. A representation vote will be taken of the employees of the respondent in the bargaining unit. All employees of the respondent in the bargaining unit on the date hereof who do not voluntarily terminate their employment or who are not discharged for cause between the date hereof and the date the vote is taken will be eligible to vote.

9. Voters will be asked to indicate whether or not they wish to be represented by the applicant in their employment relations with the respondent.

10. The matter is referred to the Registrar.

5194-73-R: Employees of S. Henry & Sons (Applicants) v. Labourers International Union of North America, Local 527 (Respondent) v. S. HENRY & SONS CO. LTD. (Intervener).

BEFORE: Rory F. Egan, Alternate Chairman, and Board Members O. Hodges and J.E.C. Robinson, Q.C.

APPEARANCES AT THE HEARING: Edmond Guindon and Paul Hansen for the applicant; F. Manoni for the respondent; no one for the intervener.

DECISION OF THE BOARD: June 5, 1974.

1. This is an application for termination brought by the employees of the intervener and signed by Edmond Guindon, an employee.

2. The application was filed on Form 13 as supplied by the Board. The form invites the applicant to indicate whether the application is being brought under sections 49, 50, 51 or 52 of the Act. The space

on the form into which the applicant is required to enter the section number was left blank by the applicant at the time of filing. Subsequently the applicants' representative indicated by letter that he was proceeding under section 49(1). That section reads as follows:

49(1) If a trade union does not make a collective agreement with the employer within one year after its certification, any of the employees in the bargaining unit determined in the certificate may, subject to section 53, apply to the Board for a declaration that the trade union no longer represents the employees in the bargaining unit.

3. The respondent submitted that Guindon, although an employee of the intervener, was not "an employee in the bargaining unit defined in the collective agreement" and was therefore not competent to bring the application.

4. The respondent further argued that in any event the application was untimely under section 49. In this respect the respondent relied upon the fact that the date of certification was February 16, 1973 whereas the application was made on February 13, 1974.

5. The respondent in support of its first objection advised the Board that it was certified under the construction industry provisions of the Act as bargaining agent for all construction labourers in the employ of S. Henry & Sons Co. Ltd. in a designated area. The respondent contended that since Guindon was employed as a truck driver he was not within the bargaining unit and therefore could not make the application.

6. Guindon, on the other hand, maintained that he was a member of the bargaining unit. He further testified that the termination application arose out of discussions between the employees in the bargaining unit and that he prepared and submitted the petition on behalf of the 28 out of the 29 employees concerned.

7. The evidence on the question as to whether Guindon is in fact a member of the bargaining unit is indecisive. However, the uncontradicted evidence is that he was acting on behalf of and with the approval of virtually all of his fellow employees as their spokesman or agent in these proceedings. In any event, the applicants, as the style of cause discloses, are clearly the employees of S. Henry & Sons Co. Ltd.

8. We proceed now to deal with the timeliness of the application. As has been observed above, the respondent applied and was certified under the construction industry provisions of the Act. Section 112(1) of the Act, which is a construction industry provision, abbreviates

the time for the making of an application for termination of bargaining rights to six months after certification. There is no reference to this section made in the application forms provided by the Board.

9. In Genaire Ltd. and International Association of Machinists and the Ontario Labour Relations Board case, 58 CLLC ¶15,388, which dealt with an application for a declaration terminating bargaining rights, McRuer, C.J.H.C. said:

It is argued by Mr. Dubin, counsel for the Board, that the applicant is strictly confined to seeking within the provisions of sections 41-44 of the Labour Relations Act a right to make the application in its present form. With this argument I cannot agree. I do not think the procedure before the Labour Relations Board should be so formal that if an applicant makes an application for relief to which he is entitled because of some technical formality in the framing of the application. In this case I think in substance the application can be considered an application to the Board to revoke its formal order and, that being true, the Board should exercise any jurisdiction given to it under the Act notwithstanding that a particular section of the Act is referred to in the formal application.

10. Having in mind the lack of reference to section 112(1) in the application form and in view of the Genaire decision, supra, the Board finds that the application is timely.

11. At the hearing, reference was made to the provisions of section 112(1). The representative of the respondent, however, stated that he had come prepared to meet the case under section 49 only. That being the case the Board is of the opinion that he ought to have an opportunity to submit to the Board, if he so desires, written representations with respect to the application in light of the provisions of section 112(1) within ten days of the date hereof.

12. In the event that the respondent does not submit argument within the time limited above, the Board will proceed to dispose of the matter on the evidence and argument presently before it.

4226-73-R: The Toronto Building and Construction Trades Council, on its own behalf and on behalf of: 1. The Carpenters' District Council of Toronto and Vicinity on behalf of Locals 27, 666, 681, 1133, 1963, 3227, 3233 of the United Brotherhood of Carpenters and Joiners of

America: 2. Labourers' International Union of North America, Local 506 (Applicants) v. ELMONT CONSTRUCTION LIMITED AND BRUCE N. HUNTLEY CONTRACTING LIMITED (Respondents).

BEFORE: Rory F. Egan, Alternate Chairman, and Board Members H.J.F. Ade and O. Hodges.

APPEARANCES AT THE HEARING: Raymond Koskie, Jack Berkow and Clive Ballentine for the applicants; James D. Karswick, Bruce N. Huntley and Alexander McKillop for the respondents.

DECISION OF THE BOARD: June 5, 1974.

1. This is an application under section 55 of the Act in which it is alleged that there has been a sale of a business by Elmont Construction Limited (hereinafter called "Elmont") to Bruce N. Huntley Contracting Limited (hereinafter called "Huntley"). In the alternative, the applicants submit that Elmont and Huntley should be treated as constituting one employer under section 1(4) of the Act. Section 1(4) reads as follows:

Where, in the opinion of the Board, associated or related activities or businesses are carried on by or through more than one corporation, individual, firm, syndicate or association, or any combination thereof, under common control or direction, the Board may treat the corporations, individuals, firms, syndicates or associations or any combination thereof as constituting one employer for the purposes of this Act.

2. Elmont was incorporated on March 5, 1956 and carries on business as a general contractor in the construction industry constructing buildings on lands owned by others.

3. Huntley was incorporated on March 5, 1963 and carries on the business of purchasing and investing in land, building on these lands for its own use and leasing the buildings to produce revenue.

4. In 1957, Elmont entered into a collective agreement with The Toronto Building and Construction Trades Council.

5. The Carpenters' District Council of Toronto and Vicinity, on behalf of Locals 27, 666, 681, 1133, 1963, 3227 and 3233 (hereinafter called the "Carpenters' Union") and the Labourers' International Union of North America, Local 506 (hereinafter called the "Labourers' Union") at all material times were and still are affiliates of the Council.

6. At all material times, the Carpenters' and Labourers' Unions were entitled to bargain on behalf of the carpenter and labourer employees of Elmont.

7. In April 1973, the Board granted a certificate of accreditation to the General Contractors' Section of the Toronto Construction Association with respect to all employees of carpenters and carpenters' apprentices for whom the Carpenters' Union has bargaining rights in Ontario Labour Relations Board Geographic Area No. 8, in the industrial, commercial and institutional sectors of the construction industry. Schedule "E" of the list of employers therein includes Elmont.

8. At all material times, Elmont was bound by:

(a) A collective agreement between the Carpenters' Union and the General Contractors' Section of the Toronto Construction Association effective July 24, 1972 and expiring April 30, 1975;

(b) A collective agreement made between the Labourers' Union and the General Contractors' Section of the Toronto Construction Association effective August 4, 1972 and expiring April 30, 1975.

by virtue of the hereinbefore mentioned working agreement between Elmont and the Council.

9. Since its incorporation, Huntley has neither entered into nor recognized that it has a collective bargaining relationship with the Council or any of its affiliates, including the Carpenters' and Labourers' Unions. Huntley does not appear on the schedule of employers in the accreditation decision referred to above.

10. It would appear that the issues with which we are here concerned arise specifically out of a project involving the erection of three buildings in the Town of Markham. The buildings are being constructed by Huntley for its own use and purposes. Huntley refuses to apply the terms of the collective agreements referred to above to the project and Elmont, when engaged on this project and other Huntley projects, also refuses to apply the agreements. As we understand it, the submissions with respect to a sale are based upon the Markham project.

11. Elmont and Huntley have similar objects set forth in their respective Letters Patent. As already observed, their main purposes and chief businesses are different. In the case of Elmont, the main purpose or business is that of a building contractor. The main purpose of Huntley, on the other hand, is the purchase of land and the erection of buildings thereon which remain the property of Huntley. The income

of the latter is derived from the rents received from its various buildings. On the broad basis of their operations, therefore, the two companies are readily distinguishable. The common meeting ground is in the area of construction and it is at this precise point that the issue before the Board with respect to section 1(4) arises.

12. Insofar as the allegation that a sale of a business has taken place between Elmont and Huntley, the Board finds that there is no evidence to support the allegation.

13. The respondent argued that if the Board finds that there is no sale, there is no jurisdiction in the Board to deal with the matter any further. The question of the Board's jurisdiction to consider the application of section 1(4) during the course of an application under section 55 was established in Re Canac Shock Absorbers Ltd. and International Union United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) Local 984 et al., 34 D.L.R. (3d) 644.

14. In Walters Lithographing Company Limited, (1971) OLRB Report, July, p. 406, the Board referred to certain criteria to be used in the process of determining whether two or more entities should be treated as constituting one employer for the purposes of the Act:

The indicia or criteria which the Board considers relevant in making a determination as to whether the activities or businesses of one or more corporations, individuals, firms, syndicates or associations, or any combination thereof are carried on under common direction and control and therefore may be treated as one employer are --
 (1) common ownership or financial control,
 (2) common management, (3) interrelationship of operations, (4) representation to the public as a single integrated enterprise, and (5) centralized control of labour relations ...

15. With these criteria and the elements referred to in section 1(4) in mind, the Board now addresses itself to the question as to whether the evidence is such as to permit the Board to treat Elmont and Huntley as constituting one employer for the purposes of the Act.

16. Elmont and Huntley occupy the same office, have common office facilities and use the same staff and solicitors. A sign at the office entrance indicates that it is owned and managed by the Huntley group.

17. The directors and officers of both companies are the same. Elmont is owned by three persons, namely Bruce Huntley, Alexander McKillop and Theodore Floreski. Two-thirds of the shares in Elmont

are owned by Floreski and McKillop and the other third by Huntley. Huntley, on the other hand, is owned by Bruce Huntley and family. It is common ground, however, that Bruce Huntley is the principle owner and manager of both companies. It is further agreed that labour relations and personnel policies of both companies are under the control of the same person, namely Bruce Huntley.

18. The evidence indicates that Elmont provides interim financing for Huntley projects and Huntley uses its buildings as security for Elmont's performance bonds.

19. On the particular project which was current at the time of this application Huntley was the owner, builder and developer. Elmont was retained to do construction work on the project. The evidence indicates that on this project, as indeed on all other Huntley projects, Elmont paid all the subcontractors and material men. Huntley, in accordance with the usual practice between the two companies, would reimburse Elmont for money advanced by it for construction purposes, that is, for wages of employees, material supplied and payments made to subcontractors.

20. It is clear on the evidence that Bruce Huntley plays a major role in the day-to-day management and direction of both companies. It is the position of the respondents that Bruce Huntley alone does all the field work for Huntley and is responsible for all of its activities. There is also evidence indicating that on Huntley projects Floreski has also carried out supervisory field duties. Insofar as Elmont's jobs are concerned, Bruce Huntley obtains the work for this company and is involved in basic policy decisions on its behalf. On the Elmont jobs Floreski is the job supervisor as a rule and has the immediate responsibility for hiring and firing men. It is beyond dispute, however, that Bruce Huntley plays an active role in these areas and has carried out supervisory duties on Elmont projects from time to time.

21. It is agreed by the parties that the employees concerned regard Elmont as their employer and Bruce Huntley as their boss whether they are working on a Huntley contracting job or on an Elmont job. All of the employees, including those engaged on the project at Markham, are paid by cheque from Elmont. The cheques are signed by Bruce Huntley. The employees are freely interchanged between respective jobs of Huntley and Elmont. It is also a fact that when members of the Carpenters' and Labourers' Unions are working at a Huntley contracting job or at an Elmont contracting job, Elmont continues to remit welfare and pension trust funds as required under the collective agreements.

22. The situation between Huntley and Elmont has continued for some years without any previous attempt having been made by the applicants to seek relief under section 1(4) of the Act. In Industrial-Mine Installa-

tions Limited (1972) OLRB Rep., December, p. 1029, the Board pointed out the necessity to deal promptly with situations in which the discretion of the Board might be exercised under the provisions of section 1(4). Particular reference is directed to paragraphs 17 and 18 of the above decision. They read as follows:

17. It is obvious from the foregoing that where the Board is asked to apply section 1(4) it is desirable that the section be applied where the situation is fresh, i.e., and where there are no outstanding bargaining rights in order that some global determination be made. The result of applying section 1(4) where inroads have been made by separate trade unions into an existing associated or related enterprise is unsatisfactory. Such an application of the section might result in amending or revoking existing bargaining rights and upset many rights, duties and obligations that may have been resolved through private negotiation to the point where they have found their way into existing collective agreements. An interesting example - interesting because it appears to involve companies which are said to be involved in this application, may be found in Industrial-Mine Installations Limited and I.M.I. Underground Contractors Limited (1971) OLRB Rep. 712. In that case the applicant trade union contended that the two named respondents fell within the purview of section 1(4) of The Labour Relations Act and in that situation the Board applied section 1(4) and determined that the two companies be treated as one employer for the purposes of the Act. That is a situation where there were no outstanding bargaining rights.

18. Further, we do not think that section 1(4) was intended to be used by one trade union as a bar to another trade union obtaining bargaining rights in a company where the first trade union held no existing bargaining rights whatsoever. Where the trade union is confronted with a situation raised by section 1(4) it has an obligation to act promptly and where related or associated employers are desirous of obtaining the benefits of section 1(4) they too must act promptly. If the parties choose to leave exposed bargaining rights in a multi-entity situation they do so at their peril and at the risk that another trade union may enter the situation and claim those exposed bargaining rights.

23. In the present instances there is, of course, only one applicant union involved and no competition arises for bargaining rights hitherto unclaimed.

24. On the basis of all of the foregoing, the Board is of the opinion that insofar as the construction aspect of Huntley is concerned, Huntley and Elmont are associated or related activities or businesses carried on under common control or direction and in the area of construction are to be treated as constituting one employer for the purposes of the Act. The collective agreements, therefore, are applicable to each company.

5143-73-R: Graduate Assistants' Association (Applicant) v. VICTORIA UNIVERSITY (Respondent).

BEFORE: Frank V. Boscariol, Vice-Chairman, and Board Members H. J. F. Ade and E. Boyer.

APPEARANCES AT THE HEARING: P. Cavalluzzo and A. Stanley for the applicant; D. S. Mills, Q.C., and F. C. Stokes for the respondent.

DECISION OF THE BOARD: June 6, 1974.

1. Pursuant to the decision of the Board dated March 6, 1974, the Board directed that the ballot box containing all the ballots cast in the pre-hearing representation vote which was held in this matter on March 18, 19 and 20, 1974, be sealed and that the ballots not be counted pending a further direction of the Board.

2. This matter subsequently was listed for hearing before us on May 21, 1974, at which time the Board entertained the representations of the parties concerning the status of the applicant pursuant to the provisions of section 1(1)(n) of The Labour Relations Act, together with any other outstanding issues.

3. Having regard to the agreement of the parties, the Board finds that all graduate students enrolled in the School of Graduate Studies at the University of Toronto who are employed by the respondent at its premises in Metropolitan Toronto as teaching fellows in conjunction with their graduate studies, save and except supervisors and those above the rank of supervisor, constitute a unit of employees of the respondent appropriate for collective bargaining.

. . .

5. The evidence in relation to the status of the applicant (hereinafter referred to as the Association) discloses that on June 7, 1973, seven persons met for the purpose of forming a trade union and at which

time a formal Constitution was adopted. It was only during the latter portion of this meeting that these persons signed membership cards in the Association and paid the required fee. There was no subsequent formal adoption or ratification of the Constitution by these "members". However, having regard to the principles as set out in the Hotel Dieu Hospital, St. Catharines Case OLRB M.R. June 1969, p. 367, we are satisfied that such a defect is a mere technical irregularity, which of itself, is not fatal to the establishment of the Association's status in these proceedings.

6. The evidence further discloses that these seven persons were retained as teaching fellows during the preceding 1972-73 academic term and that six of them were also engaged in this capacity during the 1973-74 term. With the exception of one of these persons who was engaged in this capacity at Brock University, these teaching fellows were associated with only one institution of higher learning, namely, the University of Toronto, which the parties concede, is a distinct corporate entity, separate and apart from the respondent Victoria University. It is the position of the applicant that these individuals continued to be employed in the capacity of teaching fellows during the intervening school vacation period extending from May through September of 1973. The respondent, however, contends that these individuals were not in fact employed during the summer months and that therefore at the time of the founding meeting on June 7, 1973, they had failed to comply with the eligibility requirements as set out in the Constitution.

7. In this regard, Item 3(a) of the Constitution provides as follows:

"Any person employed in any University, College, or teaching institution in the Province of Ontario in any department, institute, centre, faculty, federated university or constituent college shall be eligible to become a member of the Association".

8. Having carefully reviewed the totality of the testimony as adduced in relation to the employment status of these teaching fellows, we are satisfied these individuals were generally retained only from September through April in any given academic year and that technically they were not in fact "employed" at any institution during the course of the school vacation period. Taking such a strict interpretation, there accordingly is some merit in the respondent's submission that these individuals were not employees on June 7, 1973, the date upon which they had purported to take out membership in the applicant. It is argued that since they were not members at this time, they accordingly, could not have adopted the Constitution at the founding meeting. Moreover, in the absence of any evidence adduced before the Board to indicate that a properly constituted membership had ever

subsequently and specifically ratified or adopted this document, it is the respondent's position that such an omission constitutes an impediment to our finding of status on the part of the applicant in these proceedings.

9. The question to be resolved by this Board therefore is to determine whether this defect is so substantial and fundamental that it goes to the very root of the applicant's existence, such that it cannot be deemed to be cured by any of the subsequent actions taken by the membership which, inter alia, took the form of regular union meetings. It was during the course of one of these meetings on October 30, 1973, that the general membership had endeavoured to substantially amend the said Constitution. Even assuming that the defect can be cured, counsel for the respondent further argued that it was incumbent upon the applicant to adduce evidence to indicate that these meetings were properly constituted and conducted, having regard, for example, to the quorum requirements as set out in the Constitution.

10. As was stated by the Board in the Pacific Plating Limited Case (1973) OLRB M.R. 296 at page 287;

"The decision of the Ontario Court of Appeal in Re CSAO National (Inc.) and Oakville Trafalgar Memorial Hospital Association (1972) 26 D.L.R. (3d) 63; (1972) 2 O.R. 498, respecting trade union status seems to require that this Board relax some of the qualifications which it had previously developed in requiring a trade union to prove its status; however, it still remains necessary for an applicant, in order to prove that it has the status of a trade union, to adopt a minimum of order in constituting itself."

This matter was further expanded in The Gold Crest Products Limited Case (1973) OLRB M.R. 436 where at page 437 appears the following:

"The Board is primarily concerned with the constitution as a source of evidence of the existence of a viable organization and of evidence of the purpose and intent of the organization concerned so that the Board may be able to answer the question 'Is the Applicant a trade union as defined by the Act?'"

11. In the instant case, even if we were to concede that the ineligibility for membership of the seven individuals who purported to form the Association meant that at that time that no formal organization came into existence, surely this factor can only relate to the status of the Association as of June 7, 1973. It is clear however that other

persons who did qualify under the terms of the Constitution signed membership cards in the applicant, thereby adopting and binding themselves to that document. Even the "founding seven" subsequently became qualified for membership, and their later acts consistent with membership in the Association, would have had, in our opinion, the effect of curing any prior irregularities with respect to their own membership. In this respect, the Board has found that irregularities with respect to the formation of a union can be cured by subsequent events. (See for example the Gilbarco Canada Ltd. case (1971) OLRB M.R. 155).

12. Having carefully reviewed the totality of the evidence as adduced and applying the principles above cited, we are satisfied that the applicant is an organization that has shown itself to be capable of functioning, of having regular meetings, of amending its constitution, and of signing up, through a salaried professional organizer, new members for the purpose of obtaining bargaining rights on their behalf. It is clear, that despite the irregularities referred to above, the Association is now a highly organized body whose members' actions are governed, as far as applicable, by their Constitution, one of the purposes of which is the regulation of employer-employee relations. We are therefore satisfied that the Association is a viable entity. In short, it is a trade union, and we so find that it qualifies as such pursuant to the provisions of Section 1(1)(n) of The Labour Relations Act.

13. The Registrar is accordingly directed to unseal the ballot box and to proceed with the counting of the ballots cast during the course of these pre-hearing representation vote proceedings.

5191-73-R: Retail, Wholesale and Department Store Union, AFL:CIO:CLC (Applicant) v. CONSUMERS DISTRIBUTING COMPANY LIMITED (Respondent) v. Group of Employees (Objectors).

BEFORE: Rory F. Egan, Alternate Chairman, and Board Members F. W. Murray and P. J. O'Keefe.

APPEARANCES AT THE HEARING: H. Buchanan and G. Reekie for the applicant; E. L. Stringer, Q.C., G. Boles, R. Weaver and R. Voelker for the respondent; Terry Dixon, William Davis and Ian MacGillivray for the objectors.

DECISION OF RORY F. EGAN, ALTERNATE CHAIRMAN, AND BOARD MEMBER F. W. MURRAY:
June 6, 1974.

1. This is an application for certification in which the question arose as to whether a number of employees had paid a dollar initiation fee as stated on the membership documents filed with the Board.

2. The organization of the employees as members of the union was conducted under the direction of the union's international representative but the actual signing up of members was entirely in the hands of ordinary everyday employees who had had no previous connection with the applicant.

3. It is quite clear from the evidence that several of the persons whose cards were submitted with the application had not paid the required dollar. It was also disclosed that one of the persons engaged in recruiting members for the union had issued receipts before any money was collected. In addition, this individual mixed money which had been collected from employees with his own private funds. With the possible exception of two of the cards, he turned in to the union a dollar with each card but his evidence that he mixed his own money with that collected from employees leaves considerable doubt as to which, if any, of the employees to whom receipts were issued eventually paid a dollar. This employee was responsible for a very large proportion of the cards that were filed as evidence of membership.

4. There is no doubt whatever that the employees who took part in the organizational campaign failed to comply with the requirements of the Board with respect to the collective of money payments. This failure, however, arose entirely out of a lack of proper understanding of the requirements in that regard. There is frankness in the evidence of those who turned in the cards in question and it was clear that persons who testified that they had failed to pay the dollar were nevertheless persons who supported the union and were willing to pay the necessary initiation fee. It is also clear that no attempt whatever was made to deliberately mislead the Board with respect to the membership evidence.

5. It also appears from the evidence, however, that if in the instructions given to the organizers and in the questions asked of them there had been closer adherence to the inherent requirements of paragraph 3 of Form 8, the whole situation might well not have occurred at all. Had this been done, the instructions might have been more accurately appreciated and followed by those engaged in obtaining membership. It might also have resulted in precise answers to the questions raised by the form before it was completed and filed with the Board.

6. The Board has stated in the Valley Transportation Company Limited Case, OLRB Monthly Report, June 1964, p. 140:

The Board must expect and insist that persons who file applications for membership cards and receipts and Form 9 (now Form 8) as evidence of membership, take all necessary precautions and care to ensure that the information contained

therein is true and accurate. The Board is entitled to demand the highest standards of integrity, disclosure, and accuracy on the part of those who submit such evidence and where undisclosed inaccuracies of material facts are later brought to its attention, to take a strict view of them.

7. The present panel of the Board fully concurs in the foregoing statement. Reference should also be made to the Stanley Steel Company Limited Case (1972) OLRB Rep. February p. 181 and the cases therein noted (see also Webster Air Equipment Company Ltd. Case, 58 CLLC ¶18,110).

8. Having regard to all of the evidence and the strict requirements of the Board with respect to membership evidence as set out in the foregoing cases, the Board finds that the membership documents filed in the present case cannot be accepted as containing information which meets the standards of proof required by the Board.

9. The application is accordingly dismissed.

DECISION OF BOARD MEMBER P. J. O'KEEFE: June 6, 1974.

1. The applicant union herein made an application for certification on February 12, 1974. This matter came on for hearing on March 4, 1974. The applicant sought certification for all employees of the respondent at its warehouse at Mississauga save and except foremen, persons above the rank of foreman, office staff, persons regularly employed for not more than 24 hours per week, and students employed during the school vacation period. The respondent company proposed a similar unit with the additional exclusion of seasonal employees.

2. The lists of employees submitted by the respondent indicated that there were 317 employees in the proposed unit. The applicant union submitted a total of 142 combination application for membership and receipt cards. Of this total 125 union cards corresponded with names on the employer's list of employees. At the hearing the applicant challenged the correctness of the employer's list of employees. There were also submitted in this application various statements of desire bearing a total of 63 signatures of employees indicating on behalf of 61 employees that they did not want to be represented by the applicant union and they requested the Board to order a secret ballot vote so that they could express a true expression of their opinion. The document submitted by the remaining two employees stated that they did not want to be members of the applicant union.

3. When the applicant union challenged the correctness of the respondent's submitted list of employees, the Board following its

usual practice indicated to the parties that it would appoint its examiner to meet with the parties to look into the challenges.

4. Prior to the first hearing in this matter, the Board received a telegram dated March 1, 1974 from counsel for the respondent company, which telegram reads:

Re Retail Wholesale and Department Store
Union and Consumers Distributing Co Ltd
Your File 5191-73-R The Company submits
that the following employees did not pay the
required one dollar membership fee when
applying for membership in the above noted
trade union. G. Anwar, G. Brooks, E. Butt,
R. Cairns, W. Dean, K. Goulbourne, K. Ivany,
F. Loader, J. Mallia, R. Muise, C. Nippard,
N. Safi, G. Soares, L. Waterman, C. Watton,
H. Watton, I. Williams. Accordingly in view
of the Board's usual practice this application
should be dismissed

E L Stringer

5. On March 5, 1974 the Board received a letter dated March 4 from counsel for the respondent company which reads as follows:

Upon March 1, 1974, this office furnished the Board with a list of seventeen (17) employees whom the respondent alleged had not paid the required \$1.00 membership fee to the applicant union. I have determined that such list was sent to you in error, and should be disregarded.

On behalf of the respondent, it is alleged that the following employees did not pay the required \$1.00:

Kevin Ivany
Wavell Tucker
Colin Humphries

In addition to the foregoing, we allege that V. Khalsa did upon February 20 sign five (5) employees into membership in the applicant union without obtaining the \$1.00 payment. The names of the five employees are unknown to us, but would be among the five or six members signed up by V. Khalsa upon February 20.

The Board is requested to conduct its usual examination.

6. On March 22, 1974 the Board received a further letter from counsel for the respondent company which reads as follows:

On behalf of the respondent is alleged that Nelson Sarria, a signatory for Application for Membership in the applicant union did not pay \$1.00 on his own behalf in respect to his card.

I would appreciate the Board doing its usual investigation.

7. It is to be noted at this juncture that the Board does not utilize its staff to set off on a fishing expedition at the urging of any counsel who requests same, but uses its good judgment to seek out the prima facie facts where there is a concrete allegation of wrongdoing. Where such enquiry establishes a prima facie case, the Board summonses witnesses to a hearing at which time persons who may appear to have knowledge of the facts are called as sworn witnesses, subject to the usual test of examination, cross-examination and re-examination.

8. In addition to investigating certain of the concrete allegations of wrongdoing urged on us by counsel for the respondent company, the Board also made initial enquiries of employee Dorothy James as to the authenticity of her signature. During the course of the examiner's enquiry as to her signature, Dorothy James indicated that she had not paid the dollar membership fee to the applicant union.

9. The Board held a further hearing into this application on April 22, 1974. The first witness at the resumed hearing was Dorothy James, and she testified that she signed the application for membership in the union with the signature "D.J."; these initials did in fact represent her "signature". Her testimony was confused as to the visit to her home by the Board's examiner. She said that she was not asked questions by the Board's examiner but simply asked to sign the Board's form of enquiry by the examiner. She also said that she did not tell anyone that she had not paid the dollar initiation fee. Her further testimony was to the effect that she had attended an organizing meeting of the applicant union and was seated among the audience, several rows from the head table of the meeting room where the union cards were being signed. A fellow employee was seated alongside her and this employee gave her the application for membership card which she signed and returned to him. She did not know the name of this fellow employee, although she came to the meeting in the same automobile with him together with two other persons. During the meeting all four persons

sat together. Dorothy James testified she had not paid a dollar and was never asked to pay a dollar. She said she had no money when she went to the meeting. Her testimony was confused as to whether she knew she had to pay a dollar. She said they never talked about paying a dollar before going to the meeting but she was aware that it cost a dollar to join the union.

10. The reason Dorothy James was called by the Board to give evidence was on the basis of the Board's examiner's report to the effect that she had volunteered the information to him that she had not paid a dollar. Her evidence that she had not discussed this matter with the Board's examiner is not acceptable. The witness was obviously confused with regard to all aspects of her involvement in this matter and in my opinion, due to her obvious confusion, it would be difficult to put any reliance on her testimony.

11. The next witness, Nelson Sarria, in direct examination testified that he had signed the union card but could not remember whether he had paid a dollar or not. He said he "might or might not have paid". He was asked about his signed statement to the Board's examiner to the effect that he had not paid the dollar. He said he thought he had not paid the dollar. He had told the Board's examiner that he had not paid. In cross-examination, he gave several answers. He said "I think I am sure I did not pay". He later said more positively that he did not pay and that nobody came and asked him to pay the dollar.

12. Witness Colin Humphries testified that he had signed the union card and at the time of signing he had promised to pay the dollar on the following Saturday to a fellow employee named Ivan. Humphries testified that he subsequently forgot about paying the dollar. It was his intent to pay the dollar. The rest of his testimony related to enquiries from his supervisor about the payment of the dollar and his willingness to go to "court" with respect to this matter. He was promised and subsequently received a promotion but he assured the Board that his promotion was not in any way related to him volunteering the evidence to his supervisor about the non-payment of the dollar to the union. He was assured by his supervisor, Peter Boyeau, that "my promotion had nothing to do with the union".

13. Wavell Tucker testified that he signed a union card and at the time of signing he did not have a dollar on him, but he promised at the time of signing to pay the dollar later. He was subsequently asked several times to pay the dollar but he never did pay the dollar. He had been dismissed by the company later because he had been absent from work for four days.

14. Witness Khalsa Veersingh testified that he was employed as a picker and had been in the employ of the company for six months. He was not employed by the union but acted as a voluntary organizer, "singing the boys".

15. Referring to the non-pay relating to Dorothy James, Veersingh said she had not come to him. Veersingh stated that he attended the meeting at which she signed the card and that one of her friends who was sitting with her at the meeting got her card, had it signed by her and came back to him with the card together with the dollar.

16. Veersingh testified that Nelson Sarria was signed into the union by him and that Sarria paid him a dollar at the time of signing and that he issued a receipt to Sarria for the dollar.

17. Veersingh further testified that he had signed into the union 8 - 10 fellow employees. He had attended a meeting with Gordon Reekie, international representative of the union, prior to February 20, 1974. There were other employees at the meeting which lasted a half to one hour. Gordon Reekie had outlined to the employees the procedures relating to signing up fellow employees into the union. Reekie told them that when they signed people into the union they must get the dollar, and not to collect cards without getting the dollar.

18. Kenneth Gonsalves testified that he had been employed by the company since April 13, 1972 in stock control but had ceased his employment with the company on March 8, 1974. He was involved as a voluntary organizer in signing up his fellow employees into the union. His name was on Wavell Tucker's union card but he did not receive a dollar payment from this employee. Wavell Tucker told him that he would pay the dollar. Subsequently he went back to Tucker four or five times for the dollar but never got it. He said Tucker left the company without paying him the dollar. Gonsalves testified that he had signed Colin Humphries' card and had received a dollar with respect to that card from fellow employee Ivan Samuels.

19. Gordon Reekie, the international representative of the union, had instructed him to collect the dollar when signing up employees. He said that he had disobeyed this instruction and in some cases he had received the cards without the dollar payment but these cards he held back until such time as he received the dollar. When he received the dollar he then gave the cards together with the dollars to Reekie. He had received Colin Humphries' card together with three or four other cards and with accompanying dollars and was told everyone had paid. When he was asked by Reekie if every employee who signed a card had paid a dollar, he replied in the affirmative and said under cross-examination "I didn't think it mattered as long as the card was signed and a dollar came along with it". It was only some time after the first Board hearing in this matter that he indicated to Reekie that Wavell Tucker and someone else had not paid the dollar.

20. During the course of signing up employees Gonsalves had issued receipts before any money was collected. He had mixed up the money he got from employees for union membership with money of his own in his

wallet and had lost track of who had paid their dollar. He believed that the dollar he got with Humphries' card was paid by him. He said both Tucker and Humphries were bona fide applicants for membership in the union. He said that he had not previously been involved in organizing employees into a union and did not know the provisions of the Ontario Labour Relations Act.

21. Gordon Reekie, the international representative of the applicant union for the past 19 years, testified that he had been involved in the organizing of employees for the past 25 years. He was involved with the organizing of the employees in the instant case. The organizing in this application was through a shop committee comprising employees Khalsa Veersingh, K. Gonsalves, Jack Chaulk and Ivan Samuels. At each meeting he had with these people when they turned in cards he had asked them if they had received a dollar with each card. There were a number of cards he had rejected. Ken Gonsalves had told him that there were some instances when he had not collected a dollar. He returned these cards to Gonsalves and told him to hold on to the cards until he collected the money. He had received a dollar with each card submitted to the Board. He kept a record of the cards submitted and the dollar payment, and this money was paid into his union's national office union account.

22. Reekie had no reason to suspect a non-pay situation and the first time he became aware of such allegations was following the first hearing into this matter, following which he was informed by Mr. Buchanan, Ontario Director of his union, that this allegation had been raised at the hearing. He subsequently called a meeting of the voluntary organizers on this matter. He recalled the signing of Dorothy James' card at the union meeting that she had her hand up to receive a union card and the fellow sitting next to her came to the head table to get her a card. Khalsa Veersingh later gave him her card. Reekie rejected the card saying it was no good because only her initials "D.J." appeared in the space for her signature so he sent Veersingh back to get her proper signature and Veersingh returned the card to him and said she told him that is how she signs. A dollar accompanied the card when it was returned to him. He had no reason to believe that Dorothy James had not paid the dollar.

23. The foregoing evidence and the part played by the respondent in this application for certification illustrates the difficulty in organizing employees into a union of their choice. The respondent company via a telegram and letters to the Board alleged wrongdoing by the union initially with regard to non-payment of the dollar in 17 different instances. The company later withdrew their allegations with regard to sixteen of these seventeen and then made further allegations of wrongdoing by the union with respect to a further possible 9 instances. It must be noted that one of the fresh allegations of nine breaches included the name of one person included in the original seventeen allegations. In addition the respondent company added a further

name to its list of alleged irregularities. In all, the respondent at various times alleged that 26 applications for membership were submitted without the payment of the required dollar. In this kind of proceeding he who asserts wrongdoing is not required to prove his assertions and the Board did not require the respondent company to establish that there was foundation for their blanket allegations of wrongdoing. Of the various allegations made by the respondent, there were only two instances where the Board could find any real foundation to the charges. These related to the cards signed by Wavell Tucker and Colin Humphries. In light of the blanket allegations made by the respondent company in this matter, it is of some concern to me to determine how the respondent company became aware of these alleged improprieties. The evidence of Colin Humphries throws some light on the activities of the respondent company in this regard. Humphries' evidence is that he was approached by his supervisor about the payment of the dollar to the union. In view of section 100 of the Ontario Labour Relations Act wherein "no person shall, except with the consent of the Board, be compelled to disclose whether a person is or is not a member of a trade union or does or does not desire to be represented by a trade union", the actions of the respondent in seeking out information on union membership transactions is wholly wrong. Apart from any other consideration, to now penalize the union on the basis of the allegations of the respondent smacks of the wrongdoer benefiting from his own wrongdoing.

24. The evidence of Dorothy James was, to say the least for it, very confused and could not be relied on. I would therefore find the allegation regarding her non-payment of the dollar initiation fee was not sustained.

25. The evidence of Nelson Sarria in which he stated that he "might or might not have paid" the dollar and later said he did not pay has to be balanced with the positive evidence of K. Veersingh who stated emphatically that Sarria had paid the dollar. Veersingh was an excellent, forthright witness and his evidence has to be preferred over that of Sarria.

26. We are then left with the non-pay allegations relating to Wavell Tucker and Colin Humphries. The evidence is clear and is not denied by the persons involved in signing them into the union that they did not in fact pay the dollar amount. Both Tucker and Humphries testified that they intended to pay the dollar at the time they signed their cards into the union. Wavell Tucker was asked several times to pay the dollar but he did not pay it.

27. I join with the majority decision in concurring with them on the reasoning stated in the Valley Transportation Company Limited Case, 58 CLLC ¶18,110, p. 1717-8. In that case the Board said:

It is obviously a practical impossibility
for the Board to interview each employee on whose

behalf documentary evidence of membership is filed in a certification proceedings, in order to ascertain whether he has personally signed the application for membership and whether he has paid on his own behalf the dues or fees which the receipt accompanying the application purports to acknowledge. In addition to comparing the signatures on the documentary evidence of membership filed by the union with facsimile signatures filed by the employer, the Board seeks from the representative of the union who appears at the hearing assurances that the payment of dues has conformed to the Board's policy in that regard, and it requires such assurances to be based on personal knowledge of the facts or on inquiries from the persons who themselves collected the money. In the normal course, the Board accepts such representations at their face value. However, since the Board is compelled to rely to such an extent on evidence which, by the very nature of things, is not subject to examination by the parties to the proceedings (see section 72(1) of The Labour Relations Act), it must be very circumspect in accepting it and it must insist on the highest standards of integrity on the part of those who submit such evidence. Any attempt to mislead the Board or any failure to make full disclosure of all material facts must weigh heavily against an applicant. In dealing with this situation, the Board has made a distinction between two types of cases: (1) where the action impugned is that of a responsible officer or official of a union, and (ii) where the action is that of a supporter or canvasser on behalf of an applicant who occupies an inferior office or no office in the union. In so far as the first of these is concerned, the Board said in the RCA Victor Company Case, (1953) CCH Canadian Labour Law Reporter, Transfer Binder, ¶ 17,067, C.L.S. 76-412, that, even where only a single card is defective and it is submitted with the knowledge of such responsible officer or official, "the Board may come to the conclusion that it cannot place reliance on any of the evidence of membership submitted by the union". Where the irregularity relates to evidence of membership procured by a person of lesser rank in the union organization, the Board has taken the position that the card in

respect of which the irregularity is established is disallowed and the weight to be given to the remaining evidence of membership will depend on the nature of the irregularity and the extent to which the objectionable practice was resorted to in the signing up of members.

The instant case falls into the second category, since the employee canvassers did not hold an office in the union and were simply employee supporters involved in organizing their fellow employees.

28. The nature of the irregularity involved in this case is of a minor nature and it is clear from the evidence that these voluntary employee organizers did not attempt in any way to mislead the Board. The evidence of the employee organizers and the evidence of Gordon Reekie establishes that in all respects, Gordon Reekie conducted the organizing campaign, the instructions to the voluntary canvassers and the signing of Form 8 with the greatest of care, ethics, and in accordance with the high standards expected of him by this Board with respect to membership evidence. Gordon Reekie's involvement in this matter demonstrates only his care and proper conduct with respect to all aspects of this application.

29. Mr. Reekie signed the Declaration Concerning Membership Documents (Form 8) in support of the 142 membership cards filed by the union. Item 3 of Form 8 reads as follows:

3. (Where the documentary evidence consists in part of receipts or other acknowledgments of the payment on account of dues or initiation fees.) On the basis of my personal knowledge and inquiries that I have made, I state that the persons whose names appear on the receipts or other acknowledgments of the payment on account of dues or initiation fees are the persons who actually collected the moneys paid on account of dues or initiation fees and that each member, on whose behalf a receipt or an acknowledgment of payment is submitted has personally paid in money the amount shown thereon on his own behalf to the person whose name appears on his receipt or acknowledgment of payment as collector,
EXCEPT IN THE FOLLOWING INSTANCES:

The above wording is in recognizable official "legalese" language. It would be too much to expect that emigrant workers in lower paying jobs, whose mother tongue is not English, would grasp the meaning of that language without some attempt to reduce it to plain English. In my opinion, for this Board to require union officials to use the precise wording of Item 3 of Form 8 would be carrying technicalities to the extreme.

30. As already outlined in this decision, the Board has set high standards with regard to membership evidence. We are compelled to rely on the good faith and veracity of the declaration in Form 8. The Board views any evidence of non-pay as a very serious matter. However, while the manner in which the cards submitted on behalf of Colin Humphries and Wavell Tucker was signed may be characterized as careless and sloppy, nevertheless, having regard to all the evidence, I am not prepared to find that the voluntary canvassers involved with these cards deliberately set out to deceive or mislead this Board or that their actions were encouraged or condoned by the applicant union. Their actions and conduct were in fact contrary to the expressed instructions of the responsible union official.

31. I would further find that the responsible union official who completed Form 8 made the declaration in good faith. There is no evidence that he had knowledge or should have had knowledge of the non-pay cards. On the contrary, we have uncontradicted evidence that the responsible union official did everything humanly possible to satisfy himself that the cards were properly completed and that the dollar amount was paid with respect to each card.

32. In the result, I would set aside the cards submitted on behalf of Colin Humphries and Wavell Tucker. In these circumstances, while the union's membership would be reduced by two cards, the union would continue to maintain a union membership position far in excess of the required 35% to entitle it to a vote. Also, having regard to the documentary evidence by 61 employee-objector petitioners requesting a representation vote, I would order a representation vote in this matter to determine the true wishes of the employees as to whether they want the applicant union to represent them or not in bargaining with the respondent company.

5737-74-U: Upholsterers' International Union of North America, AFL-CIO-CLC, Local 50 (Applicant) v. SKLAR FURNITURE LIMITED (Respondent).

BEFORE: Frank V. Boscariol, Vice-Chairman, and Board Members O. Hodges and J.E.C. Robinson, Q.C.

APPEARANCES AT THE HEARING: H. F. Caley and J. O'Connor for the applicant; R. C. Filion, D. I. Wakely and M. Thibeault for the respondent.

DECISION OF FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBER J.E.C. ROBINSON, Q.C. WITH O. HODGES CONCURRING IN PART: June 10, 1974.

1. This is an application for a declaration that an alleged lock-out called or authorized by the respondent is unlawful.

2. The evidence discloses that the parties entered into a collective agreement which was to remain in effect from March 1, 1972 until February 28, 1974 in relation to certain employees engaged in the respondent's operations at Whitby and Ajax. The parties commenced negotiations in December of 1973. Some twelve meetings were held in this regard including one meeting with the Conciliation Officer appointed by the Minister of Labour and two subsequent meetings with a Mediation Officer, the last of which took place on May 15, 1974. On May 3, the parties had been notified that in the circumstances the Minister did not deem it advisable to appoint a Conciliation Board. Accordingly, effective Sunday midnight, May 19, the parties were in a legal strike and lock-out position.

3. During the course of these negotiations, the evidence further discloses that two memoranda of agreement were executed between the respondent and the applicant's negotiation committee on March 7 and April 11, respectively. In both instances, these memoranda were rejected by the general membership when submitted for ratification. In the case of the April 11 memorandum, there had been a suggestion that a sufficient number of employees had not attended at that ratification meeting. Accordingly, it was decided to hold a further ratification meeting in this respect, but this time under the auspices of the Ministry of Labour. Again the general membership voted in favour of rejection. It is clear that in all three instances, the rejection was manifested through a fairly wide margin of membership votes.

4. This was the situation confronting the parties when on Wednesday, May 15, Mr. O'Connor, Business Agent for the applicant advised the respondent's Industrial Relations Manager, Mr. Thibert, that the general membership had voted that previous evening in favour of strike action commencing on the morning of Tuesday, May 21, unless the union's demands were met. No regular work had been scheduled for the preceding Saturday, Sunday and the May 20th, Victoria Day holiday. In these circumstances, Mr. O'Connor undertook not to set up the picket line until after the Monday Holiday and Mr. Thibert, on his part, agreed that no material would go in or out of the plant premises after Sunday midnight.

5. On Friday, May 17, the second and third shifts originally scheduled for work were cancelled and it is this decision on the part of the respondent which precipitated these proceedings. While the respondent characterizes this situation as nothing more than an ordinary lay-off occasioned in anticipation of a lawful strike, it is the applicant's position that such activity constituted an unlawful lock-out.

6. This decision did not affect the day shift which encompassed approximately 560 employees at the Whitby furniture manufacturing plant and 12 employees at the Ajax operations. It did affect some 20 employees scheduled for the second and third shifts at Whitby and 4 employees scheduled for work on the second shift at Ajax. Nevertheless, seven cleaners were retained at the Whitby plant on the second shift.

7. Mr. Thibert's evidence in this regard is to the effect that he made this decision on the preceding Thursday afternoon, May 16, and that it was based upon three considerations. Firstly, he stated that he felt that the strike would be lengthy and that a thorough clean-up was therefore required in order to prevent a fire hazard. He stated that the wood shop area of the Whitby operations was particularly vulnerable where it would be impossible to perform cleaning functions and turn out production work simultaneously. He indicated that this situation also applied to the respondent's fabric manufacturing operations at Ajax. Secondly, Mr. Thibert testified that he was of the opinion that certain production targets based upon the impending strike would be met by the end of the day shift on May 17. In this regard, he indicated that 75 per cent of this production was supplied for the finished products manufactured at the Whitby facility. The remaining 25 per cent of production went to the respondent's upholstery divisions located in Toronto and that alternate suppliers of wood components were found for these locations. The third consideration, according to the witness, was the need to tend to all matters associated with a shut-down in a minimum of time. This involved the shipping of certain pre-sold finished products from its warehouse in Whitby and removing all fabrics to be used by the respondent's upholstery divisions which were stored at its Ajax warehouse. In addition certain office equipment had to be moved out of the Whitby premises for the purpose of continuing the respondent's head office activities. All these moves were achieved with the assistance of the respondent's non-bargaining unit and salaried personnel by the following Friday midnight. Mr. Thibert described the situation as rather volatile and that he had heard rumours that a "wildcat" strike was being contemplated. His hope was to avert any confrontations on the picket line should one have been set up earlier. We are satisfied that Mr. Thibert was not questioning Mr. O'Connor's undertaking given in this regard but that the membership was adamant in its demands. Its impatience in this regard was demonstrated by the employees' boycott on overtime since mid-March which did not have the applicant's support. Mr. Thibert's fears in this regard were subsequently reinforced when despite Mr. O'Connor's bona fide assurances, some trouble developed on the picket line in relation to the entry of certain computer operators upon the respondent's premises.

8. The respondent has gone to some lengths during the course of these proceedings to establish the propriety of its actions as effected on May 17 in response to what is termed a "volatile situation". In this regard we are asked to consider that at this point the strike was virtually certain to take place on May 21 and that in the face of a general bar on the part of the employees to work overtime, there was the added complication of an impending holiday week-end. The sole question, however, to be determined by this Board is whether any of the actions engaged in by the respondent on May 17, constituted an unlawful lock-out of approximately 35 of its employees.

9. A lock-out is defined in Section 1(1)(i) of The Labour Relations Act, as follows:

"lock-out" includes the closing of a place of employment, a suspension of work or a refusal by an employer to continue to employ a number of his employees, with a view to compel or induce his employees, or to aid another employer to compel or induce his employees, to refrain from exercising any rights or privileges under this Act or to agree to provisions or changes in provisions respecting terms or conditions of employment or the rights, privileges or duties of the employer, an employers' organization, the trade union, or the employees;

In addition, Section 68 of the said Act provides:

Nothing in this Act prohibits any suspension or discontinuance for cause of an employer's operations or the quitting of employment for cause if the suspension, discontinuance or quitting does not constitute a lock-out or strike.

10. As was stated by the Board in the S. McNally & Sons Limited case (1971) OLRB M.R. July, 430 at page 432;

"...a lockout, according to the definition, comprises two elements. The first of these is a closing of the place of employment or a suspension of work or a refusal to continue to employ a number of employees. The second element qualifies the first, but is nevertheless an essential ingredient of the definition. It states that, in a lockout, the foregoing actions of an employer are done "with a view to compel or induce his employees, to refrain from exercising any rights or privileges under this Act or to agree to provisions or changes in provisions etc." Both elements must be present before a lockout can be said to have taken place."

11. Having carefully reviewed the circumstances as set out above, and taking into account the representations of the parties and the principles above cited, we are satisfied that the motivations underlying the decision to cancel the shifts in question were based upon considerations which were not in breach of the second element embodied in the definition of the term lock-out.

12. In the result, this application is dismissed.

DECISION OF BOARD MEMBER O. HODGES: June 10, 1974.

The evidence in this case leaves no doubt that settlement prior to the scheduled strike was beyond achievement. The strike was certain to occur. The lay-off for the last shift of the relatively few persons concerned prior to the strike date, and for the reasons apparent in this case, cannot be found to be a lock-out. However, in my opinion the respondent could have achieved the pre-strike shut down with the co-operation of union members had a forthright approach to the union been made. Jobs are expected after the strike and an orderly and safe shut down is simply insurance against the loss of the employment facility. In my view union members understand and accept their responsibility in this regard and should not be denied that responsibility. While I consider the lay off faulty judgement in an industrial relations sense, I am obliged to find with my colleagues in dismissing the application.

5441-74-M: COOKSVILLE STEEL LIMITED (Employer) v. International Association of Bridge, Structural & Ornamental Ironworkers, Local Union 721 (Trade Union).

BEFORE: George S.P. Ferguson, Q.C., Vice-Chairman, and Board Members J. D. Bell and A. Main.

APPEARANCES AT THE HEARING: R. C. Filion and S. Mischuk for the employer; Maurice A. Green and Jack Tressider for the trade union.

DECISION OF THE BOARD: June 11, 1974.

1. The Minister has referred to the Board, pursuant to the provisions of section 96 of The Labour Relations Act, the question as to whether or not in all the circumstances the Minister has the power under the Act to appoint a conciliation officer in this matter.
2. In 1967 a collective agreement was entered into by the employer and the trade union which agreement covered certain employees of the company on erection crews. The collective agreement was effective from May 1, 1967 until April 30, 1969. At the time the company entered into the agreement, it operated manufacturing plants in Cooksville and Kingston but in addition there was an erection crew in Kitchener. After a short period of time following the signing of the collective agreement, the company laid off the employees engaged in its Kitchener erection crew and it reverted to its former practice of subcontracting the erection crew work. The collective agreement was provincial-wide in scope.
3. The collective agreement provides for automatic renewal unless written notice to terminate or modify the agreement was filed by either

party in more than ninety and not less than sixty days prior to the expiration of the agreement.

4. Neither party gave notice to the other so as to terminate or modify the agreement in 1969 and therefore the agreement was automatically renewed by its precise terminology referred to above.

5. No action of any kind was taken by the union to reaffirm or assert its bargaining rights until the summer of 1973. At this time, there was no application made by the union for conciliation but this application was withdrawn without prejudice to the union's rights.

6. Having regard to all the evidence, it is clearly established that the union at no time continued any dealings with the employer inasmuch as the union did not make any attempt to discuss the agreement or its application with the employer. There is no suggestion in the evidence of any contact whatsoever between the parties for a substantial period of time after the original collective agreement terminated.

7. It has been noted by the Board previously that as a general rule the Board will have regard to a second automatic renewal of a collective agreement but thereafter the onus is on the union to satisfy the Board that it has not abandoned its bargaining rights. This it may do by showing that it retained an interest through some contact with the other party to the agreement. The degree of activity required on the part of the union so as to retain its bargaining rights must depend on the facts in each particular case. However, in the case before us there was no contact of any kind.

8. Under the circumstances outlined above, it is the finding of the Board that the trade union has abandoned its bargaining rights which it had under the collective agreement with the employer.

9. In answer to the question referred to the Board, it is our opinion that the Minister does not have the power to appoint a conciliation officer in this matter since the union has abandoned its bargaining rights.

5260-73-U: Ronald G. Lewis (Complainant) v. Local Union 221 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (Respondent) v. Ontario Hydro (Intervener).

RE: UNITED ASSOCIATION OF PLUMBERS & STEAMFITTERS LOCAL 221

BEFORE: D. H. Kates, Vice-Chairman, and Board Members J. D. Bell and P. J. O'Keefe.

APPEARANCES AT THE HEARING: M. F. Smith for the applicant; R. Koskie and W. Vivian for the respondent; T. Sargeant for the intervener.

DECISION OF THE BOARD: June 11, 1974.

. . .

2. This is a complaint filed under section 79 of the Act wherein the grievor alleges that the respondent has treated him in a manner inconsistent with its duty of fair representation as described under section 60 of the Act.

3. The grievor is a journeyman mechanic who was employed at his trade by Ontario Hydro (hereinafter referred to as "the employer") at its Lennox Generating Project at Bath for a period of six months between September 14, 1973 to February 8, 1974. The grievor is not a member of the respondent trade union but owes his employment status to a "travelling card" issued at the material time of being hired by the employer. He has been a member of the respondent's sister Local 46 for approximately five years.

4. The grievor was assigned initially to the power house operations of the employer's project. His work performance seemed quite satisfactory to the employer while stationed there; but, for reasons never made clear to the Board, he was transferred to "the fabrication shop" in early December 1973. Shortly after the transfer was effected, minor discrepancies in his job performance were detected inducing the employer to keep a written record of the grievor's performance. Thereafter, Mr. Menard, foreman in the fabrication shop attested to a string of various incidents relating to the grievor's shortcomings in discharging his work assignments. Mr. Lewis denied having been confronted by Mr. Menard with respect to his job performance during his stay at the fabrication shop.

5. The evidence appears clear that the grievor was having problems in getting along with a number of his superiors. The culminating incident took place on January 25, 1974 when a request was made of him by his sub-foreman, Mr. Tulk, to prepare a piece of pipe required at the power house. Mr. Lewis indicated that he was told that there was no particular rush to do this job and thus set it aside to be discharged in the normal course. Mr. Tulk in the meantime appears to have been under some pressure from Mr. Menard to deliver the piece of pipe as it was holding up progress on a sector of the project. Indeed, the evidence indicated that Mr. Tulk approached Mr. Lewis several times during the course of the morning shift between 8:00 a.m. and 8:30 a.m. when requests were made of the grievor for the pipe. It appears that Mr. Lewis became somewhat exasperated by Mr. Tulk's constant requests. Finally, Mr. Tulk took the matter of the incompleting pipe to Mr. Menard and indicated to him that the grievor was being

unco-operative. It was said that Mr. Lewis indicated that he would cut the pipe when he felt like it. When Mr. Menard confronted the grievor with Mr. Tulk's tale, Mr. Lewis is alleged to have reacted by calling Mr. Tulk "a f..... liar". Mr. Lewis in his evidence denied using the the profanity but conceded that he did accuse Tulk of lying. This incident precipitated an informal discussion in the presence of Messrs. Tulk, Menard and Dallaire wherein the grievor was admonished with respect to the use of abusive language and advised to ask for advice should he not understand future assignments. The grievor understood the matter to be settled at that point.

6. A more formal meeting was scheduled on January 31, 1974 in the office of Mr. Roger Dallaire, general foreman, and in the presence of Mr. Menard and Mr. Al Corrie, shop steward. Mr. Lewis was censured for his use of abusive language and as a result was informed that he should expect a formal letter of reprimand. At this point, Mr. Lewis was excused from the meeting. Mr. Corrie discerned that the root of Mr. Lewis' difficulties was a conflict of personalities with his superiors. He therefore suggested that the grievor be transferred to another department. Mr. Lewis disputed this assertion and suggested that it was he who requested at this juncture, a transfer back to the power house.

7. Mr. Dallaire agreed to co-operate and facilitate the transfer of Mr. Lewis and it was therefore resolved that he be assigned to the respondent's hanger shop. Mr. Lewis, it appears, was not pleased with the transfer and manifested his resentment by his attitude towards his new job assignment. Mr. McNicholl, foreman of the hanger shop, related numerous incidents to the Board on the subject of the grievor's shortcomings during his forty-two hour stay under his direction. On the morning of February 8, after an incident where the grievor refused to help a co-employee lift a heavy beam for welding, Mr. Lewis requested permission to leave the plant to keep a personal appointment in Toronto. The employer responded by handing the grievor "a pink slip" terminating his services forthwith.

8. During his stay in the "hanger shop" the grievor met with Mr. Corrie on two occasions. Immediately after the transfer was effected, the grievor asked Mr. Corrie to arrange for a transfer back to the power house. Notwithstanding Corrie's attempts to persuade the grievor to give the job a try, Mr. Lewis insisted that the effort be made to satisfy his request. Mr. Corrie approached the superintendent of the project and made the request on the grievor's behalf. The superintendent rejected the request citing the denial for reasons of an absence of an opening and the fact that the employer "has gone as far as we can with this guy". Mr. Corrie relayed the employer's decision and repeated his advice to give the job "a couple of weeks."

9. On February 6, 1974, Mr. Lewis received the letter of reprimand for which he had been advised in advance to expect. The grievor contacted

Mr. Corrie and upon his arrival at the shop showed him the letter. Mr. Lewis requested that Corrie file a grievance. Mr. Corrie responded by indicating that he was satisfied that the employer in the circumstances had given the grievor "a square deal" and he was only concerned that Mr. Lewis kept his job. Moreover, Mr. Corrie made it clear that it was his attitude in performing his official functions to act as "a shop steward and not a baby sitter". In short, Mr. Corrie in the exercise of his discretion resolved not to process the grievor's complaint. And, in fact, Mr. Lewis decided at that point not to pursue the matter further.

10. Mr. Corrie's next official meeting with the grievor followed his discharge on February 8, 1974. As soon as the union Steward was contacted, he approached Mr. McNicholl and requested reasons for the termination. He was told that the grievor was being fired for lack of production and poor work. Corrie indicated to Mr. Lewis in answer to his request to grieve was that he was not filing a grievance but was of the opinion that if the business agent wanted to process a grievance it was all right with him. Mr. Lewis apparently followed Mr. Corrie's advice the proceeded to the respondent's headquarters in Kingston some twenty miles away from the project.

11. When the grievor arrived at union headquarters he found that Mr. Vivian, the business agent, was not there. Mr. Lewis waited until 3:00 p.m. that afternoon for Mr. Vivian to appear. Finally, he asked for his travel card and returned home to Toronto. At no time prior to the hearing of this matter did the grievor ever meet Mr. Vivian.

12. On February 11, 1974, the grievor contacted Mr. Vivian by long distance telephone. It appears that Mr. Vivian was apprised of the grievor's complaint and was requested to file a grievance on his behalf. Mr. Vivian indicated that he would have to take up the matter with the shop steward and instructed the grievor to call back in two hours time. Mr. Lewis in his evidence indicated that Mr. Vivian was to call him back, but when he didn't hear from him a second call was made. We are satisfied on the basis of the grievor's telephone bill filed as an exhibit herein that Mr. Lewis made two long distance telephone calls to Mr. Vivian on February 11, with respect to the disposition of the complaint. It appears that after Mr. Lewis' first call Mr. Vivian contacted Mr. Corrie by telephone and the steward reported that "there wouldn't be much of a chance" should a grievance be processed. Mr. Vivian indicated that Mr. Corrie told him that the grievor used abusive language, was difficult to get along with and was being transferred from one job to another. Indeed, it appears that Mr. Vivian placed total reliance on Mr. Corrie's assessment of the situation. Mr. Vivian related that he has known Mr. Corrie for some seven years and has known him to be a fair man. He relied on his judgement and was confident that Corrie would do everything he could to represent the interests of the complainant. Mr. Vivian also indicated that his treatment of the complaint was also conditioned by his knowledge of the reputation of the employer. He was of the view that "it was pretty hard to get discharged from Ontario Hydro".

13. Later that day Mr. Vivian informed Mr. Lewis that he was of the opinion that there was no merit in his complaint to justify the filing of a grievance. Vivian indicated that during this ten minute phone conversation he experienced some difficulty in communicating with the grievor. Nonetheless, Mr. Lewis appears to have said when he learned of Vivian's decision that "he would go to other places". Mr. Vivian did not understand what he meant by that remark but concluded that the matter was at an end in that the grievor had returned home to Toronto after having picked up his "travelling card". No further contact was made by the grievor with respect to pursuing the complaint until the filing of the instant complaint.

14. Counsel for the grievor argues that based on the facts as recited herein the respondent trade union has acted arbitrarily with respect to its treatment of the complainant's grievance. In support of this submission counsel argues in the first instance that no serious attempt was made to process the complaint arising out of the letter of reprimand of February 6, 1974. And when Mr. Lewis was fired two days later the investigation of the alleged reasons for the discharge was so cursory as to be no investigation at all. That is to say, the respondent trade union did not have enough information upon which to make a decision on the merit or otherwise of the grievor's complaint.

15. Counsel for the respondent trade union argues in reply that at all material times Mr. Lewis was treated by Mr. Corrie and Mr. Vivian with fairness and candour. As soon as Vivian learned of the grievance by long distance telephone he contacted Corrie and received and ultimately relied upon his assessment of the situation. It is submitted that it is normal trade union practice for a business agent to rely upon the judgment of a shop steward with respect to the manner of disposition of a grievance. In any event, it is suggested that at all material times the grievor did not appear to object to the manner in which he was treated in that he never pursued the complaint beyond the conversations with Vivian on February 11. His only protestation was that he intended to pursue the matter in other places or from another source.

16. Counsel for the employer made no submission on the merits of the particular complaint against the trade union for allegedly failing to adhere to its duty of fair representation. Rather, counsel reserved his right to make submissions on the remedy should the Board be disposed to find in favour of the grievor.

17. Since the introduction of a provision into the Act dealing with the violation by a trade union of its duty of fair representation the Board has accumulated some experience in applying standards of conduct consistent with the discharge of that duty. The Board has indicated that "in an inquiry under section 60 we are not primarily engaged in a consideration of the merits of the complainant's case as between the

complainant and the company. The duty of the Board under the section is to carry out an examination of the conduct of the union throughout the matter in order to ascertain whether it has acted in a manner that is arbitrary, discriminatory or in bad faith in its representation of the complainant. The Board is therefore concerned as to whether the decision of the union was made in good faith and not with the question as to whether the Board would have reached the same or some other decision on the merits of the original dispute between the parties. (see; Essex International of Canada Limited Case OLRB M.R. January 1972, 104). And in determining whether a union has acted in manner it chooses to treat employee complaints the Board has stated that "we do not consider the duty of fair representation requires a union to blindly carry every grievance through to arbitration at the demand of the grievor". (see; The Dorothy Ellens Case OLRB M.R. August 1972 770). Indeed, "a union fulfills its duty under section 60 so long as in reaching its decision not to process a grievance, it does not act in a manner that is arbitrary, discriminatory or in bad faith." (see; The Sal Messina Case OLRB M.R. July 1972, 719). And in applying a standard owed employees by a trade union the Board has indicated that "the duty...does not require the Board to assess the quality of representation in an abstract way. The Board need only determine whether the union has represented all employees in the bargaining unit in the same manner... The standards of a professional advocate cannot be imposed upon the union officials who were involved...they are not professional advocates or lawyers and accordingly the duty of care is not the same as that imposed on lawyers." (see; Rutherford's Dairy Limited OLRB M.R. March 1972 240). Elaboration of this theme was expressed by the Board in another case where it stated "...we recognize that union affairs are conducted for the most part by laymen. In some situations there are experienced full time officials of a trade union who conduct the union affairs; in other situations, the union affairs are conducted by employees in their spare time, while in yet other situations employees may be given a limited amount of paid time by their employers to engage in trade union matters. The Board does not decide cases on the basis of whether a mistake may have been made or whether there was negligence nor is the standard based on what the Board may have done in a particular situation after having the leisure and time to reflect upon the merits. Rather, the standard must consider the persons who are performing the collective bargaining functions the norms of the industrial community and the measures and solutions that have gained acceptance within the community." (see; The Ford Motor Company of Canada Limited Case OLRB M.R. October 1973 519). Thus the crucial question in determining whether a trade union has discharged its statutory obligation and responsibility is whether that trade union "...has represented the interests of all employees fairly and impartially and without hostility." (see; Rutherford's Dairy Limited Case (supra)).

18. The Board has also had occasion to examine what it understands the Legislature's intention to have been in introducing into Section 60 the word "arbitrary" in the context of the administration of the

grievance and arbitration machinery by a trade union as the statutory agent of employees. The Board has indicated that where a responsible union official ignores a complaint or treats a complaint in a perfunctory manner and thereby allows time limits for filing a grievance to lapse, then the trade union will be deemed to have acted in an arbitrary way. "The shop chairman refused to put his mind to the particular matter presented to him" and thereby inculpated the trade union. (see; The Alfred W. Compton Case OLRB M.R. October 1972, 917). Indeed, where upon request, a grievor was wrongly informed that there was no avenue available to appeal a decision of the union executive board rejecting an employee's grievance, the Board determined that "the actions on behalf of that respondent union were conducted in a manner that was arbitrary within the meaning of section 60 of the Act." (see; The El Mocambo Tavern Case OLRB M.R. October 1972 862). And once the matter of whether or not there is merit in processing a complaint through the grievance procedure to arbitration is forwarded to the membership for determination at a duly constituted meeting and the grievor requests and is denied without legitimate excuse the opportunity to make representations, the Board determined that "the denial of access to the union meeting if not arbitrary, was discriminatory since Mr. Pap should have been allowed the same access to the union as were other members of the union." (see; The Joseph Pap Case OLRB M.R. January 1974, 60).

19. On the other hand, the Board has stated that where the appropriate union officer has considered the complaint and rejects it as being unworthy, the Board will not review the merits of that decision in discharging its obligations under the Act. (see; Francon, Division of Canfarge Case OLRB M.R. 1973, 556). Indeed, failure to process a grievance standing by itself will not constitute a violation of section 60 in absence of male fides by the trade union. (see; The Brian F. O'Donnell Case OLRB M.R. May 1972, 423). And a trade union will not be deemed to have acted arbitrarily where in the process of disposing of a complaint, practical considerations integral to the negotiating process may very well have overridden what appears to be a meritorious grievance. (see; The Ford Company Limited Case OLRB M.R. October 1973, 519). Thus where a union has come to the conclusion that a complaint is unworthy of processing through the grievance procedure, the Board has concluded that the union "has an obligation not only to each individual employee but to the bargaining unit as a whole and if it processes a grievance to arbitration that appears to have virtually no chance of success, it would do so to the detriment of the other bargaining unit employees not only because of the expense involved but because of the reputation the union would then gain." (see; The Rutherford's Dairy Limited Case OLRB M.R. March 1972 240).

20. We now come to the application of the principles cited herein to the facts and circumstances of the instant complaint. The difficult question before this Board having regard to the evidence and the representations of the parties is whether the officials of the respondent

trade union "put their minds to the particular matter presented to them" by the grievor. Or, in other words, did the respondent trade union treat the grievor's complaint in a perfunctory and superficial manner so as to lead the Board to conclude that its actions were so arbitrary so as to constitute a breach of its duty of fair representation?

21. The evidence indicated that immediately upon Mr. Lewis' transfer to the fabrication shop from the power house he incurred difficulty in discharging his work assignments. Mr. Menard in his evidence attributed the grievor's shortcomings to his incapacity to read and understand the blueprints of the particular sector of the project involved. We are satisfied that Mr. Lewis was not performing his job duties to the satisfaction of his superiors while employed in the fabrication shop. This ultimately contributed to conflict with his superiors culminating in the incident of January 25, 1974. Mr. Lewis indicated as well that he was concerned that he was in some difficulty with the employer by virtue of the written record he kept of the events leading to his dismissal.

22. The Board wishes it to be clear that it makes no conclusive findings with respect to the incidents related to us through Mr. Menard (and Mr. McNicholl). We repeat that the Board does not assume the posture of an arbitration board in resolving a just cause grievance. But for the limited purpose of resolving the issues arising out of the instant complaint we conclude that the employer had cause to be dissatisfied with the grievor's work performance while at the fabrication shop.

23. The evidence with respect to the inadequacies of the grievor's work performance upon his transfer to the hanger shop is equally compelling. Mr. McNicholl related to the Board numerous incidents illustrating the grievor's shortcomings. We also conclude that at no material time after this transfer was the grievor disposed to apply himself to his new position. Mr. Lewis admitted he resented the transfer and thereby made no attempt to adjust to it. This conclusion is corroborated by the grievor's efforts to persuade Mr. Corrie to arrange an immediate transfer back to the power house. The reason cited was Mr. Lewis' concern that he would still remain answerable to Mr. Dallaire whom he believed bore a grudge against him.

24. Mr. Corrie during the period between January 31 and February 8, 1974, met with the grievor on four separate occasions. He never balked at meeting with the grievor when contacted by him. After the grievor's verbal censure for the use of abusive language Corrie arranged his transfer to the hanger shop. Once transferred Corrie attempted without success to arrange his transfer back to the power house by making a direct request to the project superintendent. After receipt of the letter of reprimand on February 6, Corrie met with Mr. Lewis and offered

him some prudent advice. When he was discharged two days later, Corrie upon being contacted inquired into the reasons for the discharge. We are satisfied that Mr. Corrie at all material times treated the grievor's complaints in an even handed business like manner applying a judicious blend of patience and firmness to the grievor's problems. For purposes of the instant proceedings we find that Corrie through his involvement would have sufficient exposure to the material facts upon which an assessment could be made of the relative chances for success should the complaint be processed through the grievance procedure. When Corrie advised the grievor to take his complaint to the business agent we infer that Corrie simply was not prepared to assume sole responsibility of processing what appeared to him to be an unworthy claim.

25. The grievor's complaint was the first grievance Mr. Vivian was required to deal with in administering the Hydro agreement since assuming the office of business agent a month before. Immediately upon being apprised of the discharge he sought further information from the shop steward responsible for the employees concerned. Upon inquiry Vivian obtained and indeed relied upon Corrie's assessment of the situation. Hence, based on the shop steward's judgment as well as his own knowledge of the employer's reputation of an aversion to the penalty of discharge, Vivian appears to this Board to have applied himself to the matter of the grievor's complaint. The Board cannot conclude that Vivian acted in a perfunctory way in the manner he disposed of the complaint.

26. The Board in reaching this conclusion has paid some regard to the circumstances under which Vivian communicated with the grievor. The grievor had picked up "his travelling card" and left Kingston for Toronto on the afternoon of February 8, 1974. On February 11 Vivian had two conversations with Mr. Lewis by long distance telephone. When Vivian indicated to the grievor his view that he was not prepared to process his complaint for the reasons given, Mr. Lewis left the matter in a most ambiguous state. He informed Mr. Vivian that he intended "to take the matter to other places". Vivian indicated to the Board that he was under the impression that the grievor had indeed abandoned his claim. In normal circumstances a procedure is available to review his decision by appeal to the respondent's executive board. Had Mr. Lewis pursued this avenue and been wrongly denied access to this process, the Board may very well have come to a different result. (see; The El Mocambo Tavern Case OLRB M.R. October 1972 862. But, having regard to the circumstances, we are of the view, that the grievors own inaction aborted any chance for success.

27. The Board therefore finds that the respondent addressed itself to the matters arising out of the grievor's complaint and thereby discharged its duty of fair representation. The complaint is therefore dismissed.

5535-74-U: Toronto Newspaper Guild (Applicant) v. C C H CANADIAN LIMITED (Respondent).

BEFORE: G. W. Adams, Vice-Chairman, and Board Members O. Hodges and J.E.C. Robinson, Q.C.

APPEARANCES AT THE HEARING: P. Cavalluzzo, H. Peacock and M. Trebish for the applicant; V. T. Heather for the respondent.

DECISION OF VICE-CHAIRMAN G. W. ADAMS: June 12, 1974.

. . .

2. This is an application for a consent to prosecute wherein the applicant states that "[t]he respondent has breached section 14 of The Labour Relations Act in that it has failed to bargain in good faith and make every reasonable effort to make a collective agreement."

3. The applicant was certified on May 29, 1973, to bargain on behalf of all employees in the editorial department of the respondent save and except the managing editor and confidential secretary. Notice to bargain was served upon the company and the parties first met on June 18, 1973 with subsequent meetings on July 3, 1973; August 8, 1973; September 12, 1973; September 21, 1973 before the union applied for conciliation services on September 25, 1973. The first meeting with a conciliation officer took place on October 20 or 22, 1973 and the last meeting occurred on November 6, 1973. A letter dated November 19, 1973 from the office of the Minister of Labour informed the parties that the Minister had decided not to appoint a Board of Conciliation, whereupon the trade union requested the appointment of a mediator. The first meeting with the mediator took place on December 12, 1973, with subsequent meetings between the parties on December 20, 1973 and January 16, 1974.

4. The particulars of the complaint upon which the applicant relies and is limited thereto, are as follows:

The applicant was certified on May 29, 1973. Negotiations were commenced with the company but failed to produce a collective agreement. A conciliation officer was appointed in October 1973 and a no-Board report was issued in November, 1973. Throughout the negotiations the company has taken a rigid position that unless its demands are met in certain important areas, such as union security, etc., proper negotiations cannot commence. Furthermore, the company throughout negotiations has refused to bargain in respect of certain employees included in the bargaining unit under the Board's certificate. In December, the company unilaterally

altered wages and working conditions as soon as the right to strike and lock-out accrued but completely misled the employees by alleging the proposed alternations had been rejected by the union without indicating in formal negotiations had been frustrated by the company's own attitude.

5. It is apparent that three allegations form the basis to this complaint. First, it is alleged that the company has taken a rigid position that unless its demands are met on certain important issues such as union security, negotiations cannot commence. In its reply to the application for consent the respondent denied all allegations but specifically requested particulars as to what was meant by the term "etc." in regard to this first allegation. No particulars were forthcoming and at the hearing Mr. Heather, representing the company, objected to the adduction of any evidence in regard to this first allegation other than evidence relating to union security. Mr. Cavalluzzo took the position that Mr. Heather's position was sound to the extent that he would be prejudiced by the lack of particulars and Mr. Heather claimed to be unprepared to respond to anything other than union security. However as the evidence was submitted through Mr. Peacock, the union's first witness, it became obvious that the word "etc." was intended to refer to the issues of recognition and subcontracting and Mr. Heather presented no evidence to suggest that other matters had caused any difficulties at the outset. Moreover, his admission in final argument that there had been four stumbling blocks to the negotiations (union membership, dues, recognition and subcontracting) but that they had been resolved by the end of the mediation process, undercuts his claim that he came to the hearing only prepared to deal with the issue of union security. Accordingly, the Board does not feel that Mr. Heather has been prejudiced in any way by the lack of particulars. It therefore reads the word "etc." to refer to those issues of recognition and subcontracting that arose in the negotiations. The second allegation is that the company refused to bargain in respect to certain people included in the unit by virtue of the Board's certificate. Thirdly, it is alleged that the company completely misled the employees in regard to the history of the negotiations.

6. At the outset of the hearing Mr. Heather asked that the Board dismiss the application in that the offence occurred six months prior to the filing of the application. Because a prosecution, if granted, proceeds by way of summary proceedings and because no summary proceeding, by virtue of S.721(2) of The Criminal Code R.S.C. 1970, Chap. 34, can be instituted more than six months after the time when the subject-matter of the proceeding has arisen. Mr. Heather suggested that this application was untimely. He relied upon James Speirs, Frank Maule v A. M. Woolfrey, Oshawa, General Motors Limited, T. H. Glen, Toronto, British American Oil Co. Limited, K. G. Cooke, Hamilton, Westinghouse, L. G. Kerr, Dryden, Dryden Paper Co. Limited, N. H. Wage, Copper Cliff, International Nickel Co. Ltd., J. Lawler, Hamilton, Steel Co. of Canada,

J. L. McIntyre, Sault Ste. Marie, Algoma Steel Co. OLRB M.R. June 1968, p.294, wherein the Board, in response to an application for consent to prosecute based upon a breach of section 48 (now section 58), dismissed the application concluding that because the alleged offence commenced November 22, 1966 to March 29, 1967, "no proceedings could be instituted in Magistrate's Court [in that] more than six months have elapsed after the time when the subject matter of the proceedings arose." Mr. Heather argued that this case, like A. M. Woolfrey, was a continuing act and therefore arose in July or September of 1973. The application was therefore untimely.

7. Unfortunately, the Board, in A. M. Woolfrey, failed to elucidate upon how it construed the alleged violation and is therefore of little assistance. However, the question involves an interpretation of the meaning of section 721(2) of The Criminal Code and it has been held under that section that in determining the limitation period it is immaterial if part of a continuing offence was committed prior to six months before the laying of the information (see R v Belgal Holdings Ltd., (1967) 3 CLC 34 (Ont. H.C.J.) and where a continuing offence was charged, part of which was outside the six month period of limitation, it was held that the information was not void but could be amended by striking the part that was out of time. Finally, in Laundry, Dry Cleaning & Dye House Workers' International Union, Local 351 and Vail's Services Co. Limited and Mr. John Scherer, OLRB M.R. March 1971, p.163 the Board ruled that in a proceeding of this kind:

[it] may look at all the events that took place during the course of bargaining between the parties in order to obtain the complete picture of the relationship between the parties during bargaining. However, in view of the six-month limitation on summary proceedings, the applicant must call evidence of events within six months of the date of the hearing in this matter in support of its allegations of a failure to bargain in good faith.

The respondent company's request that the Board dismiss the application is therefore denied.

8. One other issue should be dealt with as a preliminary matter because it too affects the entire basis to the application. Mr. Cavalluzzo, counsel to the trade union, attempted to adduce evidence of matters arising out of or relating to both the conciliation and mediation processes. Board member Robinson questioned the propriety of doing so and Mr. Cavalluzzo requested a ruling.

Section 100(2) reads:

No information or material furnished to or received by a conciliation officer or a mediator,

- (a) under this Act; or
- (b) in the course of any endeavour that a conciliation officer may make under the direction of the Minister to effect a collective agreement after the Minister,
 - (i) has released the report of a conciliation board or a mediator, or
 - (ii) has informed the parties that he does not consider it advisable to appoint a conciliation board,

shall be disclosed except to the Minister, the Deputy Minister of Labour or the chief conciliation officer of the Department of Labour.

9. Mr. Cavalluzzo, through his witness Mr. H. Peacock, who was present at most of the negotiation sessions, wanted to adduce evidence of the course of negotiations through both conciliation and mediation. There was a strong implication that this involved the tendering of evidence about what the conciliation officer or mediator said to Mr. Peacock or what he said to the officers and a strict reading of section 100(2) would preclude any evidence of this kind. However, in Bakery and Confectionary Workers' International Union of America, Local 415 and Gorman Eckert and Company Limited OLRB M.R. December 1969, p.1135, the question arose as to whether a proposed collective agreement submitted by one party to the other during conciliation (it was submitted to the conciliation officer) was admissible in evidence. After extensively reviewing the case of Building Service Employees' International Union, Local 183 and Trenton Memorial Hospital 64 CLLC ¶ 16,302 which gave rise to the enactment of sections 100(2), 100(3), 100(4) and 100(5), the Board ruled that "the purpose of Section 83(2) [now section 100(2)] was intended to protect those conversations of a private nature but that conversations or matters of a non-private nature are not protected by section 83(2) [now section 100(2)]". Accordingly, the proposed collective agreement presented to the applicant and to the conciliation officer was found to be of a non-private nature and properly admissible in evidence.

10. It must be recognized that neither section 14 nor section 100(2) can be read to the exclusion of the other. The Board must attempt to accommodate and integrate the purposes of each of these sections and only where there is an irreconcilable difference between them should the Board read the more specific wording of section 100(2) as overriding the values of section 14. It is believed that the Gorman Eckert decision follows such an admonition. The "private-non-private" distinction breathes meaning into the obligation to bargain in good faith during the conciliation and

mediation processes while recognizing the fragile function of the conciliator or mediator - a function the integrity of which depends upon the confidentiality of private communications. This confidentiality was outlined by the Board in Canadian Stackpole Ltd. 59 CLLC ¶ 18,142 wherein the majority wrote at p.1778;

Although the extent to which an administrative board may rely on official notice has not been clearly defined, it would be preposterous to suppose that the members of this Board, constituted as it is, can fail to take cognizance of the fact that most successful conciliators have achieved their success by the use of manifold techniques among which are those of conferring separately with each of the parties and of meeting only with key principals and of the further fact that conciliators in this jurisdiction have from time to time relied on each of these last two mentioned methods of breaking down the barriers to the settlement of a dispute. It is common knowledge that skilled conciliators act as a channel of communication between the employer, on the one hand, and a senior official of the trade union, on the other, at time without a single employee even being aware that the conciliator is dealing with either of the "principals". It would require clear and unequivocal language in the Act to convince us that it was the intention of the Legislature, in enacting the several provisions of the Act that are included under the heading "Negotiation of Collective Agreements", to lay down that conciliation officers must desist from resorting to such techniques should they in their wisdom in any particular case deem it desirable to do so, except perhaps where the other party to the proceeding consents thereto. Similarly we cannot bring ourselves to believe that the Legislature in enacting the sections referred to, intended to deny to conciliation boards freedom to resort to tested and time-honoured methods of reconciling the parties to an industrial dispute, as they have done in this jurisdiction time without number in the past.

Accordingly, private communications - communications with the conciliator or mediator when the parties are not in presence of each other - must have the protection of section 100(2). This is so because the mediator

or conciliator must be able to discover a party's true "resistance point" [see; Stevens, Strategy and Collective Bargaining Negotiations (1963) p.122 and Simkin, Mediation (1973)] and to do so a party must be assured that the confidentiality of such communications is inviolable. However public statements - statements made while the parties are in each others presence - if admissible in evidence do not undermine the integrity of the conciliator's or mediator's function and hence are not precluded by section 100(2).

11. Applying these principles to the facts at hand, the Board was prepared to permit Mr. Peacock to give his opinion that at the conclusion of the conciliation and mediation processes the parties were little closer to reaching an agreement but the Board was not prepared to allow him to elaborate on this opinion if it entailed the description of communications he had had with the mediator or conciliator while out of the presence of the company's negotiators. Such communications would be clearly of a private nature.

12. Finally, Mr. Cavalluzzo argued that section 100(2) should be analogized to the privilege of solicitor and client. In other words, he suggested that section 100(2) was a privilege of the parties before the Board and therefore could be waived by any one of the parties. The Board rejected this contention. Section 100(2) is intended to protect the integrity of the conciliator's or mediator's office - it is not a privilege of the parties. If one of the parties could waive the application of section 100(2) and reveal the communications between it and a conciliator for instance, the effectiveness of this official could be seriously impaired. He may have tempered the comments received from the parties or made projections that were based on his own informed but personal speculation. Such revelations would only undermine the usefulness of such offices.

13. Now to the merits of this application. On an application for consent to prosecute, it is not necessary for the applicant to establish a conclusive case warranting conviction, but only to make out a prima facie case or an arguable point of law (analogous to the function of a judge at the preliminary hearing of a criminal matter). However, the Board has an independent discretion to grant or refuse such applications - a discretion which is guided by the course of action it considers best suited "to preserve or advance industrial peace, tranquility and order in the circumstances immediately before it and in industrial society at large." (see; Canadian Union of General Employees v Toronto Western Hospital OLRB M.R. October 1972, p.851, 855). The evidential standard used by judges in the setting of a preliminary inquiry has been described as in the following ways.

On a preliminary inquiry the Crown does not have to prove the guilt of the accused, but merely to show that he is probably guilty and that there is

sufficient evidence to commit him for trial."
 (see; R v Cowden 5 C.R. 18, [1947] O.W.N. 1018,
 90 C.C.C. 101, [1948] 1 D.L.R. 682.

If a magistrate at the conclusive of a preliminary hearing is convinced that a jury could do nothing but acquit on the evidence tendered, it is his duty to discharge accused.
 (see; R v Sinclair [1944] R. L. 447)

If the evidence of the prosecution is such that a judge or jury, believing it, might convict the accused, he should not be discharge at the preliminary hearing.
 (see; R v Kaylor [1939] 3 W.W.R. 307 (Alta.)

The Board considers these standards, while not determinative, of assistance to its deliberations.

14. The Board is of the opinion, in light of such standards, that a prima facie case or arguable point of law has been made out by the applicant with respect to part of the first allegation, all of the second allegation of the complainant, but not as to the third. Evidence was adduced in rebuttal by the respondent that the respondent wanted the employees in the editorial department, who were members of a legal or accounting profession but not specifically excluded in the certificate issued to the trade union, omitted from the description in the recognition clause of the collective agreement. Moreover, the respondent indicated an unwillingness to proceed on other matters (save for membership, dues and subcontracting) unless agreement was reached on this point. Admittedly, by the conclusion of the mediation process, as evidence by the draft agreement Mr. Peacock sent to Mr. Heather, the Board's certificate was to be the parameters of the recognition clause, but this latter agreement does not minimize the impact that the employer's initial resistance had on the negotiations and in any event, it is an arguable proposition of law that one can subsequently undue an unlawful act (if these actions of the company were in fact unlawful). Thus, consent to prosecute is granted on that portion of the first allegation that relates to an alleged rigid position of the company on the issue of recognition. It is not granted on those aspects of the first allegation dealing with union security and subcontracting. There was no evidence to suggest that the company's position on these items was other than "hard bargaining". There is no requirement that a company must make concessions or agree to a particular agenda of discussions. The parties met often and bargained hard. Because the union might have to accept an agreement "tailored to the company's measurements", to use a modified version of Mr. Peacock's own chosen words, is no reason to conclude that the company was bargaining in bad faith. (see Regina ex. rel. Hearn v Norfolk General Hospital [1957] 119 C.C.C. 290 (Ont. Mag. Ct.). There

was no evidence to suggest that the company was unprepared to sign an agreement; but of course it wanted an agreement on its own terms. Collective bargaining is redolent of self interest and without evidence to suggest that the company's terms were so unreasonable as to suggest that, in reality, it wanted no agreement and no trade union, the Board is unprepared to grant the application. Finally, the Board, for the above mentioned reasons grants the union consent to prosecute on the second allegation in its entirety.

15. As for the third allegation - that in a letter to all employees dated December 4, 1973, written by Mr. K. Laton, Vice-President and Managing Editor, the company misled the employees and thereby breached section 14 - the Board dismisses the complaint as being without any merit. If the letter is misleading the union had an opportunity to disabuse its members by a similar communication. But more importantly, there was evidence to suggest that the proposal outlined in that letter had been rejected by the union. Admittedly, this was because of the employer's refusal to accept the unions proposals on "the four stumbling blocks" (recognition, membership, dues and subcontracting) but the letter is factually correct. The employer has no duty to detail to the employees all the proposals made by the trade union that it rejected, thereby placing its proposals in a less appealing perspective. Without evidence developing an obvious intention to mislead, the Board finds no merit in this portion of the complaint.

16. The Board therefore grants its consent to prosecute the company with the limitations imposed by its reasoning in this decision.

DECISION OF BOARD MEMBER O. HODGES: June 12, 1974.

Considering all of the evidence and the representations made by the parties and the standards to which the Board looked for assistance in its deliberations, I am of the opinion that a prima facie case or arguable question of law has been made out by the applicant with respect to all the allegations, as follows:

Allegation No. 1:

"Throughout the negotiations the company has taken a rigid position that unless its demands are met in certain important areas, such as union security, etc., proper negotiations cannot commence."

In considering the evidence concerning the bargaining stance adopted by the respondent employer, I have in mind the nature of the information services which are the business of the respondent company, C.C.H. Other than practitioners before this Board, the management of C.C.H. can reasonably be expected to know what is by now the common law of industrial relations in this highly industrialised province of Ontario.

Considering therefore that union security, whether a form of maintenance of membership or a check off of union dues, is now seldom absent from a first collective bargaining agreement, I cannot accept the intransigence of the respondent with respect to these essential ingredients of a collective agreement as simply "hard bargaining". To refuse to bargain on other matters unless the basic requirement of union security is forfeited is not in my opinion in compliance with Section 14.

Sub-contracting or "contracting out", without bargainable safeguards, is an ever present danger to the job security of employees who have acquired seniority. Again, a hard line 'no' to this essentially reasonable interest of the trade union cannot be accepted as only "hard bargaining."

It is my finding, therefore, that a prima facie case has been made out in support of the first allegation, which concerns union membership, the check off of union dues and contracting out.

Allegation No. 2:

"The company throughout negotiations has refused to bargain in respect of certain employees included in the bargaining unit under the Board's certificate".

This is the issue on recognition that was one of the four absolute rejections set down by the respondent as a bar to continued bargaining. The Board is unanimous in finding an arguable question of law in this, the second allegation.

Allegation No. 3:

"In December the company unilaterally altered wages and working conditions as soon as the right to strike and the right to lock out accrued but completely misled the employees by alleging the proposed alterations had been rejected by the union without indicating in formal negotiations had been frustrated by the company's own attitude."

I am constrained from joining the Chairman in his decision to dismiss the third allegation by a careful reading of the preamble to the Act:

"WHEREAS it is in the public interest of the Province of Ontario to further harmonious relations between employers and employees by encouraging the practice and procedure of collective bargaining between employers and

trade unions as the freely designated representatives of employees."

Throughout all of the testimony of the witness called by the applicant, there was no suggestion that the Trade Union was contemplating or preparing for a strike. All of the evidence indicates a real and serious desire by the trade union to negotiate a workable and realistic collective bargaining agreement, and thus to establish a forthright collective bargaining relationship with the respondent employer. On the other hand, there is some evidence that the respondent employer did not even clothe its representative at the bargaining table with the requisite authority to bargain in any meaningful way. The evidence in my view leaves the respondent employer badly wanting in the light of the preamble to the Act and the requirements of S. 14. The obligation "to bargain in good faith and make every reasonable effort to make the collective agreement" was brazenly flouted by the misleading letter sent by the respondent to the employees. Therefore, in all of the circumstances in this case, I find that a *prima facie* case has been made out in support of the third allegation.

DECISION OF BOARD MEMBER J.E.C. ROBINSON, Q.C.: June 12, 1974.

I dissent.

I have had an opportunity of reading the respective decisions of my colleagues and having regard to the past practice of the Board in generally refusing to discuss evidence before it in applications for consent to prosecute, it would seem that my colleagues, to some extent, have usurped the authority of the Provincial Judge.

Having said that, however, I would find on the basis of the evidence presented that not only was there no violation of section 14 of The Labour Relations Act by the respondent, but indeed, while there may have been hard bargaining throughout, such bargaining was effective and resulted in the settlement of many of the major matters in issue.

I have carefully reviewed the particulars of the applicant's complaint and would find, without hesitation, that the charges of the applicant, as supported by its evidence, did not constitute a *prima facie* case of the violation of section 14 of the Act.

Indeed, even if certain of the charges were supported by the evidence, (and I cannot find any substance to such charges) I would not grant the Consent to the Institution of a Prosecution in that the charges referred to were for a period commencing shortly after May 29, 1973 but the application herein was not commenced by the applicant until April 23, 1974. Accordingly, in the exercise of my discretion, I would refrain from issuing the Consent.

I must address myself to the comments of the learned Vice-Chairman as they relate to the mediation and conciliation process.

Section 100(2) states:

(2) No information or material furnished to or received by a conciliation officer or a mediator,

(a) under this Act; or

(b) in the course of any endeavour that a conciliation officer may make under the direction of the Minister to effect a collective agreement after the Minister,

(i) has released the report of a conciliation board or a mediator, or

(ii) has informed the parties that he does not consider it advisable to appoint a conciliation board,

shall be disclosed except to the Minister, the Deputy Minister of Labour or the chief conciliation officer of the Department of Labour.

While the learned Vice-Chairman may have correctly and technically addressed himself to the problem in the instant case, I am distressed as to the repercussions which may follow from such an approach. Surely this area is not to be determined in an academic rather than a practical sense.

Surely the parties to this procedure should in no way be inhibited to the extent that certain disclosures, whether public or not, may be used against them in subsequent proceedings. Surely there should be a certain sanctity in the complete procedure irrespective of the provisions of section 14 of The Labour Relations Act. In my opinion, to do otherwise, may result in fruitless pursuit of what was intended to be, and has proven to be, a worthwhile function in the determination of industrial unrest between the respective parties.

4632-73-U: International Association of Machinists and Aerospace Workers (Applicant) v. FLEETWOOD CORPORATION (Respondent).

BEFORE: Rory F. Egan, Alternate Chairman, and Board Members O. Hodges and F. W. Murray.

APPEARANCES AT THE HEARING: Jeffrey Sack and William Fraser for the applicant; R. A. Werry and L. Henry for the respondent.

DECISION OF THE BOARD:

June 17, 1974.

1. The applicant applied to the Board for a declaration that a lock-out called or authorized by the respondent is unlawful. The Labour Relations Act defines a lock-out as follows:

1.--(1) In this Act,

(i) "lock-out" includes the closing of a place of employment, a suspension of work or a refusal by an employer to continue to employ a number of his employees, with a view to compel or induce his employees, or to aid another employer to compel or induce his employees, to refrain from exercising any rights or privileges under this Act or to agree to provisions or changes in provisions respecting terms or conditions of employment or the rights, privileges or duties of the employer, an employers' organization, the trade union, or the employees;

2. The applicant union applied for certification on September 7, 1973 with respect to employees of the respondent who were employed in the Parts and Service Branch of the respondent's operations at Rexdale.

3. An Examiner was appointed by the Board following a hearing on the certification application on October 5, 1973. On or about Wednesday, October 17, 1973, the employees involved in service work were advised by the Manager, Mr. Donald Cowdell, that the respondent was closing down the service depot and that their employment was being terminated. At the date of the hearing the services of the employees concerned had been terminated and the service operation and ceased.

4. In announcing the shut-down, Cowdell told the service employees that he believed the shut-down was because of the union coming in since this would increase overtime costs. He stated in evidence that this was his own conclusion and the only one that he could reach in the circumstances.

5. The decision to close was made by the head office of the respondent in Montreal and Cowdell was not consulted in the matter. He stated that the decision came as a surprise to him. He said that since the operation had always carried on at a loss, his conclusion with respect to the union seemed the only logical explanation.

6. There was a great deal of evidence brought out with respect to the financial condition of the Rexdale depot and of other service depots operated by the respondent throughout Canada. It was made quite clear as the result of diligent cross-examination that other

service operations in various depots had been carried on at a loss for a number of years.

7. The situation with respect to service depots was reviewed by the respondent and in the early summer of 1973 a plan referred to as Action Plan, part of a general production improvement plan, was introduced with a view to improving the efficiency and production of the service departments. This was done in the hope of at least reducing the losses. Certain manning adjustments were also made at the Rexdale depot and one employee was terminated and no replacement for him was authorized.

8. It is of interest to note that the evidence of the employees was that they noticed these changes and became disturbed with respect to their job security as a result. Their evidence was that the concern about job security was in fact the chief force which motivated them to join the applicant union.

9. This apprehension on the part of the employees is somewhat difficult to reconcile with the surprise expressed by Cowdell when the operation was terminated. It does, however, lend some support to the respondent's contention that it was concerned about the operation of the service depot and the loss situation and was taking steps to alleviate the situation prior to the time of the advent of the union.

10. The respondent's evidence went further than that, however. It was to the effect that a decision to close down the operation had in fact been made by the National Manager of the Parts and Service Division of the respondent in August of 1973 following what was said to be disappointing reports on the results achieved under the action and production improvement plan. The final decision to close down the operation was, as already noted, conveyed to the employees on October 17, 1973.

11. There can be no doubt on the evidence that the service operation in question has been brought to an end. The closing down was not accompanied by any intimation, direct or inferential, of a possibility of continuation of the operation conditional upon the agreement of the employees to cease the exercise of any rights or privileges under this Act or to agree to any changes in working conditions.

12. Upon all of the evidence, viewed in the light of the definition of a lock-out cited above, the Board has no alternative than to dismiss the application.

4931-73-R: International Brotherhood of Electrical Workers, Local 804 (Applicant) v. RALPH FORD ELECTRICAL CONTRACTORS LIMITED, D. WILSON ELECTRICAL LTD. AND 275247 ONTARIO LIMITED (Respondents) v. Group of Employees (Objectors).

BEFORE: Rory F. Egan, Alternate Chairman, and Board Members J. D. Bell and O. Hodges.

APPEARANCES AT THE HEARING: A. M. Minsky, W. Collier and H. Holloway for the applicant; R. A. MacDermid and G. R. Brock for the respondents; C. Clinton for the objectors.

DECISION OF THE BOARD: June 19, 1974.

1. The applicant alleges that the sale of a business has occurred from Ralph Ford Electrical Contractors Limited (hereinafter called "Ford") to D. Wilson Electrical Ltd. (hereinafter called "Wilson") and/or 275247 Ontario Limited (hereinafter called "the Numbered Company") and requests a declaration from the Board with respect to the applicant's bargaining rights.

2. Ford was incorporated on March 6, 1968 and has carried on business as an electrical contractor in Waterloo since that time. Ralph Ford was president; Claudia Ford secretary-treasurer, and Daniel J. Wilson vice-president at the time of incorporation. The latter continues to be a shareholder in Ford.

3. Wilson was incorporated on May 28, 1973. Its first directors were David James Wilson and Carol Ann Falsetto. The objects for which Wilson was incorporated are:

(a) To carry on the business of electricians, electrical and electronics workers and manufacturers, assemblers and installers of and workers and dealers in electronical construction, electrical or electronic apparatus, articles, parts, appliances and accessories of every description and to provide maintenance therefore and to engage in any business in which the application of electricity for any power, light or otherwise is or may be useful, convenient or ornamental or any other business of the light nature; and to enter into contract to make such arrangements as may be necessary to carry out the foregoing;

(b) Subject to the Professional Engineers Act, to carry on the business of Engineering;

(c) To operate a store or stores, a repair or rewind shop or shops, and display room or rooms;

(d) To manufacture, buy, sell, import, export and trade and deal in goods, wares, merchandise and personal property of any and every class and description both wholesale and retail.

4. The Numbered Company was incorporated on August 27, 1973. The president and secretary-treasurer of this company is Robert A. Bryant. He is brother-in-law of Ralph Ford. The objects for which this corporation was incorporated are as follows:

(a) To operate and conduct a service for the use of offices, stores, factories and industrial and commercial concerns of all kinds, including the following services: calculating, stenography, typing, bookkeeping, tabulating, telephone answering, survey work, desk rental, general office and factory work of all kinds, loading and unloading of cars, trucks, ships, barges and all cargo-carrying vehicles, demonstrations, direct mail, convention, house cleaning, maid service and other allied work.

(b) To operate and conduct a personnel service for the use of factories, industrial and commercial concerns of all kinds including without limiting the generality of the foregoing the following personnel services: electricians, electrical workers, electronics, radio and radar workers and manufacturers of and workers and dealers in engines, dynamos, generators, batteries, switchboards, electrical and electronic appliances and accessories of every nature and description and personnel services for any business in which the application of electricity for any reason whatsoever may be useful, convenient or ornamental.

5. Robert Bryant and Daniel J. Wilson were both employees of Ford at the time of the incorporation of their respective companies. On July 13, 1973, Daniel J. Wilson ceased to be a director of Ford.

6. The applicant commenced to organize the employees of Ford in March of 1973. A certificate was issued by the Board on August 16, 1973. There were four negotiation meetings held between the applicant and Ford as a result of which an agreement was reached and signed on September 20, 1973. There was a question raised by Ford as to whether the documents which made up the agreement constituted a collective agreement.

The basis for the objection was the allegation by Ford that the agreement did not correspond with the constitutional requirements of the applicant union's international. The evidence established that the documents were signed by both parties thereto and that the provisions in the agreement have been implemented by Ford including a provision which postponed the agreed upon increase of rates until November 1, 1973.

7. In view of the foregoing, the Board finds that a collective agreement exists between the applicant and Ford dated September 20, 1973 and that it is binding upon both parties.

8. On September 21, 1973, the employees of Ford were advised by written notice that "Dave Wilson is no longer employed by Ralph Ford Electrical Contractors Ltd. Any matters that you might normally have taken up with Dave should now be referred to me. (Signed) 'Ralph'". At about the same time the Wilson company commenced operations on a project at Orangeville referred to as the Ronto development. The Ford company had done preliminary work on electrical services to be used in the Ronto job which was a housing development. This work took place some time in August. David Wilson was, of course, aware of the Ronto development project and he proceeded to obtain the job on the electrical installations in the houses which were to be built. Wilson recruited five of the employees of Ford whom he knew were not in favour of joining the applicant union at Ford's and used them on the Ronto project. Ford, in addition to having done the preliminary work, had bid on the job of installing the electrical services in the houses but had failed to obtain the contract which, as already observed, Wilson did obtain. It was Wilson's testimony that he had formed the company when he became aware that the union was attempting to organize Ford. He felt that if he were able to organize a non-union company he would be in a more advantageous position than Ford when bidding on house-building projects. His recruitment of the employees of Ford whom he knew were not desirous of joining a union was, of course, in keeping with his understanding that a non-union company would be more competitive than a union company in the fields in which he intended to operate.

9. In an agreement dated September 18, 1973, the Numbered Company, being that of Robert Bryant, entered into an agreement with the Wilson company which provided that the Numbered Company would provide work and services as required by Wilson in the conduct of its business as an electrical contractor. The employees were advised that they were now working for the Numbered Company and that they were being leased to the Wilson company. Their cheques were drawn on the Numbered Company. The Numbered Company also took from Ford Maureen Porter who had been the office secretary for that company.

10. The Wilson company not only obtained the Ronto job which Ford had hoped to get, it also successfully outbid Ford with respect to a number of jobs which were being undertaken by former customers of Ford.

Ford made inquiries of some of these companies as to why he was not successful in his bidding and in general was advised that it was because Wilson was tendering at a lower figure.

11. In addition to taking a number of Ford employees to work for him, Wilson also obtained from Ford certain physical assets. These included two trucks, a quantity of electrical components and work shacks which Ford had purchased with a view to using them on the Ronto job. In fact, at the time that Wilson used the parts on the Ronto development they were contained in boxes bearing the Ford company name. The evidence is, however, that reasonable financial consideration passed from Wilson to Ford covering the purchase of the assets in question. The evidence of Wilson and Ford is to the effect that Ford's business had declined so that he had no use for the two trucks and the automobile and he needed the money. The sale of the electrical equipment was a straight transaction between the two companies.

12. It is the opinion of the Board that the combination of the sale of the assets and the transfer of the employees who were not in favour of union representation, together with their appearance on the Ronto job which Ford had anticipated obtaining, gave rise to the belief on the part of the applicant that a sale of the business within the meaning of the Act may have occurred.

13. It is clear on the evidence that the chief instigator of all of the transactions under review was Daniel Wilson. He foresaw the advent of the union and put into operation plans which he had previously made to move into the house construction business with a non-union company which he had kept waiting in the wings until Ford became unionized.

14. With the cooperation of Bryant and through the use of the Numbered Company, a work crew of former Ford employees unsympathetic to the union was formed for use by Wilson. Wilson and the Numbered Company have collaborated in setting up an arrangement which, on the evidence before the Board, works to their mutual advantage and to the prejudice of Ford with whom they compete. Apart from the proceeds of the sale of assets to Wilson, there is no evidence whatever indicating any advantage accruing to Ford out of the business liaison existing between Wilson and the Numbered Company. Ford, in fact, is attempting to continue to carry on its business.

15. There is no evidence, direct or inferential, of any participation by Ford in the Wilson and Numbered Company arrangement. There is no evidence of any disposition by Ford of any part of its business to either of those companies. The appearance of Wilson on the Ronto project on which Ford had done the preliminary work is certainly something which invites scrutiny. There is, however, no evidence that Ford

had any contractual relationships with Ronto which it might have disposed of to Wilson. On the contrary, the evidence leads to the conclusion that Daniel Wilson, when he considered the time to be ripe, simply went out and underbid Ford with respect to that and other jobs.

16. The Board finds that the evidence does not establish the sale of a business nor is it such as to persuade the Board that the companies involved ought to be treated as constituting one employer for the purposes of the Act.

17. The application is accordingly dismissed.

5189-73-U: Karl Krafczek (Complainant) v. THE UNITED STEELWORKERS OF AMERICA LOCAL 3767, THE STEEL COMPANY OF CANADA, LIMITED (Respondents).

BEFORE: D. H. Kates, Vice-Chairman, and Board Members J. D. Bell and P. J. O'Keefe.

APPEARANCES AT THE HEARING: K. Krafczek for the complainant; H. F. Caley and C. Trowers for the respondent union; T. Sargeant and M. D. Berardine for the respondent company.

DECISION OF THE BOARD: June 20, 1974.

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2. This is a complaint filed under section 79 of the Act wherein it is alleged that the respondent trade union has acted in a manner inconsistent with its duty of fair representation as described under section 60 of the Act.

3. The grievor was employed for nine years by The Steel Company of Canada, Limited (hereinafter referred to as "the employer") until the date of his discharge on July 23, 1973. Mr. Krafczek was dismissed for reasons of excessive absenteeism in that the grievor could not account for a ten week absence from work for alleged medical ailments. More particularly, the employer requested the grievor to provide it with a medical certificate supporting the reasons for his prolonged absence from work. When the grievor furnished the employer with a note from his doctor, it was indicated that Mr. Krafczek had not been under his care for some eleven months. There was a further indication in the note that the grievor was under the care of another physician. As the evidence unfolded however it appeared that the grievor had last met with this particular physician in April, 1973, some three months prior to the discharge. Based on the grievor's incapacity to substantiate the medical reasons for his absence, the employer effected the discharge.

4. Three grievances were launched by the respondent trade union as a direct result of the employer's decision. These were pursued to the fourth stage of the grievance procedure as set out under the collective agreement. The one policy grievance immaterial to the matters in issue herein was abandoned at this stage. The other two grievances related to the procedural shortcomings of the notice requirements for discharge under the agreement and the merits of the discharge itself. By practice of the trade union, Mr. Chris Trowers, business representative of the respondent's parent international, is introduced into the deliberations at the fourth stage of the grievance proceedings.
5. Upon being appraised of the relevant facts and circumstances Mr. Trowers recommended to the respondents' grievance committee that there was insufficient evidence to justify the pursuance of the discharge grievance to arbitration. However, he indicated to the committee that there was some merit in "the notice grievance". It was at this stage in the grievance proceedings that the committee first became aware of the physician's note indicating that the grievor had not met with his doctor for approximately eleven months.
6. On September 17, 1973, the matter of the disposition of these grievances was put before the membership at its regular monthly meeting. The facts pertaining to the grievances were communicated to the membership by their chief steward, Mr. Frank Hayes. Mr. Trowers addressed the members wherein he expressed his misgivings with respect to the merits of taking the discharge grievance to arbitration. The consensus of the membership, however, was that the matter should be pursued. It was indicated to the Board that the grievor at all material times had reported his absence by telephone to his foreman periodically in compliance with the terms of the agreement. The membership's mandate was conditional upon the grievor buttressing his case by obtaining additional evidence. As a result of the meeting Mr. Hayes informed the employer by letter (an extension of one day heretofore having been obtained) that the grievances were to be pursued to arbitration.
7. The collective agreement requires a party within five days from the date that notice is given that a grievance is to proceed to arbitration to appoint its nominee to an arbitration board. Mr. Paul Di Biaso, president of the respondent local, indicated to the Board that he assumed that Mr. Trowers after the membership meeting of September 17, 1973, would proceed with the appointment of the nominee. Mr. Trowers indicated that he presumed that the appointment of the nominee was to await the securing of additional evidence. Accordingly it was his impression that an attempt would be made to obtain from the employer an extension of the time limit.
8. Once the time limit for appointment had lapsed the employer took the position that the matters in dispute were not arbitrable. Upon discovery of this shortcoming Mr. Trowers obtained from the

employer the commitment should the matter proceed to arbitration to litigate both the merits of the grievance as well as the arbitrability of the matter.

9. Mr. Krafczek at this point appears to have been left with the impression that his grievance had been abandoned by virtue of the respondent's failure to appoint a nominee within the required time limits. Mr. Trowers explained that an argument could be made that the nature of the time limits were directory and not mandatory. It followed that if successful, a bar to the arbitrability of the merits of the discharge would not be imposed. In any event, Mr. Trowers was satisfied that the commitment that was obtained from the employer to hear the grievance on its merits redressed to the extent that was possible under the circumstances the mistake that had been made. In this light, Trowers stated that he urged the grievor to obtain from his physician medical evidence that could be used to challenge the employer's actions. Indeed, it was urged that the grievor at least submit a resume of all relevant information that could possibly be used "to find a hook to hang a case on".

10. After the meeting of September 17, 1973, Mr. Hayes informed Krafczek of the decision to proceed to arbitration provided more evidence was secured. At no time following this conversation did the grievor submit information to the respondent in support of his case. The Board entertained the evidence of Mr. Krafczek with much sympathy. We were informed of the pressures exacted on the grievor emanating from his domestic and financial difficulties. The grievor told the Board that in March 1973, the employer as a result of his difficulties transferred him from his regular job to the "sorting" department. The grievor notwithstanding the advice of his doctor to return to work simply could not bring himself to do "woman's work". Instead he stayed away from his job reporting to his foreman by telephone at periodic intervals. During these conversations he complained of a series of ailments incapacitating him from discharging his work assignments. Mr. William Connell, foreman of the sorting department, stated that in the course of these conversations he would urge the grievor to see a doctor. The grievor responded that he couldn't afford their services because he needed the money to support his family. Mr. Connell further suggested to the Board that he became somewhat suspect of the grievor's ailments in that at no time was it ever indicated to him that the grievor had seen a doctor. The Board also received in evidence a note from his psychiatrist indicating that he had not seen the grievor since April 30, 1973. His last appointment was kept on July 30, 1973, a week following his discharge.

11. The grievor indicated to the Board that the information requested of him by the respondent was not obtainable from his doctor. He stated that his doctor would not release a report of his condition without the appropriate authorization. The grievor at no time offered

an explanation as to why he never told either Mr. Hayes or Mr. Trowers of these difficulties. Furthermore, no explanation was offered the Board as to why he did not provide Mr. Trowers with a written memorandum of the events leading to his discharge. His only reaction was that once he knew that the time limits for the appointment of a union nominee had expired, "it would have done no good".

12. In December, 1973, the matter of pursuing the grievance to arbitration was discussed at a meeting of the respondent's executive board. There the relative merits of the grievance were weighed. It was decided that if the "notice grievance" was resolved to the respondent's satisfaction the discharge grievance would be withdrawn. We were informed that Mr. Hayes, the chief steward, expressed his misgivings in adopting this procedure but deferred to the majority opinion. Mr. Di Biaso was convinced that there was no evidence to adduce in support of the grievor's position. On December 17, 1973 at a regular monthly meeting the matter of the disposition of the grievance was put to the membership in light of the executive board's recommendation. The membership endorsed that recommendation.

13. The grievor complained that at no time was he ever invited to any of the relevant membership meetings for the purpose of expressing his views to the membership when his grievance was discussed. Mr. Di Biaso stated that it was known that regular membership meetings were held on the third Monday of each month. And furthermore, there was a standing invitation to all members to attend such meetings. The grievor related one incident in March 1973, where some objection was taken to his admission to a meeting but in the end he was permitted to stay. Thereafter he attended no more membership meetings. According to Mr. Di Biaso in all the years that the grievor was a member he only showed up at contract ratification meetings. In any event, Mr. Di Biaso stated that the grievor attended without any problem other union functions during the period of disposition of his case.

14. On January 7, 1974, the grievor was informed by letter that his discharge grievance was being withdrawn as a result of the membership's endorsement of the executive board's recommendation. Later that month the grievor received a cheque from the employer for a week's pay in satisfaction of the notice grievance. On February 12, 1974, the instant complaint was filed with the Board.

15. The issue before this Board is whether the respondent in disposing of the grievor's complaint as aforesaid acted in a manner that was arbitrary, discriminatory or in bad faith. The grievor relies basically on three events that warrant some comment by this Board in resolving the questions raised herein.

16. In the first instance it is suggested that it was the duty of the respondent to invite him to the membership meetings wherein the

matter of disposition of his grievance was discussed. The Board finds that there was indeed an open invitation to all members to attend the meetings. We are of the opinion that had the grievor made an attempt to attend these meetings for the purpose of expressing his views and been denied access, then, it would thereupon be incumbent on the respondent to offer a legitimate excuse. But since it was known to the grievor that regular monthly meetings are held at a given time and place and he elected not to attend, as was his practice, we are not disposed to fault the respondent on this account.

17. In the second instance, it is suggested that the respondent in permitting the time limits required under the terms of the collective agreement to expire without the appointment of a nominee was evidence of bad faith for purposes of section 60 of the Act. The evidence of Mr. Di Biaso indicated that he assumed Trowers in the ordinary course would appoint a nominee after the membership's conditional endorsement at the meeting of September 17th. On the other hand, Mr. Trowers was under the impression that an extension of the time limits would be sought pending the securing of further evidence. The Board has weighed this incident with some concern in resolving the issues raised in these proceedings. Mr. Trowers from the moment he was introduced to the situation was of the opinion that there was no relative merit in taking the discharge grievance to arbitration without additional cogent evidence. He repeated this view at the membership meeting of September 17th and maintained this position throughout. The members insisted that the matter continue to arbitration on the sole ground that the grievor had complied with the requirement of keeping the employer informed of his absence at regular intervals. Had this Board been of the view that Mr. Trowers deliberately rejected the mandate of the membership by permitting the time limits to expire (and thus abort the arbitrability of the issues), we would not hesitate to find that the respondent had indeed acted in bad faith. But the evidence does not support this conclusion. We are satisfied that a misunderstanding arose with respect to the interpretation to be attached to the membership's conditional endorsement. We are further satisfied that this misunderstanding is attributable to the rather unprofessional business procedures adopted by the respondent's representatives. Although we find the degree of laxness as disclosed to this Board during the course of these proceedings is most unbecoming on organization of the respondent's stature, the Board is nonetheless satisfied that reasonable steps were taken after discovery of the mistake to redeem to the extent possible the viability of the grievance. We further find that the grievor's reaction to the respondent's shortcoming, although sufficient to cause some anxiety, did not justify the conclusion that his grievance has been foresaken and thereby rendered further investigation on his part superfluous.

18. The third matter that bears some comment by this Board pertains to the settlement of the grievances. It was obvious that when no additional evidence was forthcoming in support of the discharge grievance,

the views initially expressed by Mr. Trowers became all the more persuasive. The evidence adduced through Mr. Di Biaso, Mr. Hayes and Mr. Trowers, indicated that Mr. Krafczek simply could not buttress what appeared to be a lost cause. And, the Board in reviewing the evidence, simply cannot come to the conclusion that there was in fact any information that the grievor could provide. The grievor complained of a variety of ailments that incapacitated him from working during his ten week absence. During this period he never went to see a doctor. The grievor confessed that his doctor in February 1973 advised that returning to work would be of therapeutic benefit in relieving him of the mental anxieties exacted by his domestic difficulties. When he went to work he rejected his assignments because they were allegedly "women's work". Indeed, the Board attributes the grievor's absence from work during this period to his reluctance to perform these new duties. In short, the Board is satisfied that no medical evidence justifying his absence from work would be forthcoming had the grievor made diligent effort to secure the required certificate. On the contrary, the preponderance of the evidence indicates that his doctor's recommendation supported the positive aspects of attendance at his job.

19. The Board, in evaluating the treatment accorded the grievor by the respondent in this rather sad affair, cannot conclude that the respondent's representatives acted in a manner that was arbitrary, discriminatory or in bad faith. The Board has stated in the past that it cannot impose standards of conduct on union officials "based on what it might have done in a particular situation after having the leisure and time to reflect upon the merits". (see; The Ford Motor Company Limited Case OLRB M.R. October 1973 519 at p.526). Notwithstanding this admonition, the Board in the circumstances of this case cannot restrain itself from questioning whether something more than that which is necessary to satisfy the basic standard of meeting a statutory duty could have been done on the grievor's behalf.

20. The Board having regard to the facts and circumstances and the representations of the parties thereto, finds that the respondent did not at any material time violate its duty of fair representation and therefore dismisses the complaint.

5528-74-M: United Steelworkers of America (Applicant) v. TEXACO CANADA LIMITED (Respondent).

BEFORE: T. E. Armstrong, Q.C., Chairman, and Board Members A. Main and J. D. Bell.

APPEARANCES AT THE HEARING: L. Ingle for the applicant, and T. Storie, R. Roberson, P. Bond and G.J. Barlow for the respondent.

DECISION OF T. E. ARMSTRONG, Q.C., CHAIRMAN, AND BOARD MEMBER A. MAIN:
June 24, 1974.

1. This is an application pursuant to section 95(2) of the Labour Relations Act, wherein the applicant asks the Board to decide whether Peter A. Morozuk, Patrick Dewan and Edward Orpel are employees of the respondent for the purposes of the Labour Relations Act. In a letter dated May 8, 1974 the respondent's solicitor asks that the application be dismissed for the reason that it is untimely. The matter was listed for hearing in order to entertain the representations of the parties concerning timeliness. At the hearing it was agreed that, should the application proceed, the Board should follow its normal practice and appoint an Examiner to inquire into and report to the Board on the nature of the relationship between the three named persons and the respondent.

2. In order to evaluate the submissions of the parties, it is necessary to review the earlier certification application heard by the Board on October 26, 1973 (Board file No. 4498-73-R). There was no material dispute between counsel as to the facts surrounding that application. The applicant sought a unit of all employees of the respondent at Ottawa, with certain exceptions not relevant to the issues now before us. The respondent in its reply proposed a bargaining unit of "all oil burner servicemen..." rather than the all-employee unit proposed by the applicant. At the hearing on October 26, 1973 the respondent pointed out that the applicant's description would embrace some 40 employees of the respondent in Ottawa. Accordingly, following discussions, the applicant agreed to the respondent's proposal to restrict the unit to oil burner servicemen and their agreement is reflected in the Board's endorsement of October 29, 1973, which reads in part as follows:

"3. Having regard to the circumstances of this case and in accordance with the provisions of section 6(1) of the Labour Relations Act, the Board further finds that all employees of the respondent at Ottawa employed as oil burner servicemen, save and except foremen, persons above the rank of foreman, office and sales staff and truck drivers who are not engaged in servicing oil burners, constitute a unit of employees of the respondent appropriate for collective bargaining."

3. Having settled the bargaining unit description, the panel of the Board hearing the certification application announced that the respondent's list contained the names of 16 persons within the unit agreed upon and that 11 of the 16 membership documents filed by the applicant corresponded with names on the respondent's list. Counsel for the respondent contended that the lost cards were examined by counsel for the applicant, who raised no objection concerning their loss. Although counsel for the applicant could not positively confirm

that he had inspected the lost cards, he was content to accept the respondent's version of the events and argument proceeded on that basis.

4. It was common ground that the parties met on February 13, 1974 for the purpose of negotiating a collective agreement. At that meeting, a question arose as to the right of Mr. Morozuk (one of the persons whose status is in dispute in these proceedings) to be present. On March 5, 1974 Mr. Briginshaw, on behalf of the applicant, wrote to the respondent, stating, in part:

"At the first meeting of negotiations which was held on February 13, 1974 at 9:30 a.m. at the Skyline Hotel, Carleton Room, in Ottawa the company objected to Peter Morozuk being present at negotiations, as you informed us you felt that he was a subcontractor and was not covered under the certification as issued to us by the Ontario Labour Relations Board. I felt, and still feel, that it covers all employees and that Peter Morozuk, Patrick Dwan and Ed Orpel were the employees I understand you objected to.

I would appreciate receiving a letter from you stating the company's position on the employees I have mentioned. At the time of the hearing there was one other employee but I understand that employee is no longer with Texaco."

By letter dated March 22, 1974, Mr. Bond, on behalf of the respondent, replied to Mr. Briginshaw's letter, stating in part as follows:

"The Ontario Labour Relations Board in its decision of October 29th, 1973 certified the United Steelworkers of America, as the bargaining agent of all employees of Texaco Canada Limited at Ottawa employed as oil burner servicemen. Constactors and Sub-Contractors are not employees of Texaco Canada Limited and therefore do not come within the bargaining unit covered by the Certification."

Finally, on April 19, 1974 the applicant filed the instant application, alleging that a question had arisen as to the status of the three named persons.

5. Before the Board, counsel for the respondent advanced two arguments in opposition to the application. First, he contended that the applicant should have been alerted to the problem concerning

the status of the three individuals when he inspected the lost cards at the hearing on October 26th. Counsel contended that had the applicant raised the issue at that time, its right to outright certification might well have been affected in a material way. Alternatively, he contended that the application was premature since the parties had not discussed the matter fully prior to the filing of the application. In this regard he relied on Beaver Wood Fibre Co. Ltd., 61 CLLC ¶16,184, and other authorities cited in Sack and Levinson, Ontario Labour Relations Board Practice, 1st Ed., p. 248, footnote 47, which, he contended, support the proposition that the Board's practice is to refuse to entertain section 95(2) applications unless discussions aimed at settlement have preceded the application.

6. Having considered all of the material facts as well as the representations of the parties, the Board is of the view that the application must proceed. As to the respondent's first argument, the parties were advised orally at the hearing that the applicant's membership position would not have been adversely affected if any or all of the persons whose status is now in dispute had been added to the respondent's list of employees in the certification proceedings. In other words, even if the matters now in issue had been raised for determination in the certification application, it cannot be said that "the Board would have to direct a representation vote...rather than have certified the applicant outright" as in Davis Lumber Company Limited, 59 CLLC ¶18,148.

7. Moreover, the applicant's failure to raise the issue in the earlier application does not, in our view, amount to an express or implied consent to the exclusion of the disputed persons from the bargaining unit. The applicant's conduct is consistent with the recognition that it was in a certifiable position with or without the lost cards and that a challenge to the list would simply delay the issuance of the certificate. In this connection it should be noted that there was no mention at the hearing of any purported distinction between employees and independent contractors.

8. For the above reasons, we are unable to conclude that the applicant's failure to raise the status of the disputed persons was "a device to gain an unfair advantage" (as in Davis Lumber (supra)), or that the applicant waived its right to contest their status under section 95(2) of the Act.

9. As to the allegation of prematurity, we are of the view that the admitted facts establish clearly that a question has arisen in the course of bargaining for a collective agreement as to whether the three named persons are employees. Whether or not the matter was fully discussed and explored at the meeting of February 13, 1974 is immaterial, in the light of the later exchange of correspondence, where the issue was clearly and unambiguously joined.

10. An analysis of the Board's jurisprudence does not support the proposition that advance discussion per se has inevitably been treated as an essential pre-condition to a section 95(2) application. It is true that in particular circumstances the Board has rejected an application where it has found that no advance discussion has occurred: see, for example, the Beaver Wood Fibre Co. Ltd. case, supra. In that case, however, the fact that no advance discussion had taken place was treated as evidence that no status question had arisen during the operation of the current collective agreement. Here, as we have found, such a question arises in the exchange of correspondence. Moreover, it should be noted that the Board has, on occasion, treated the application itself as evidence of the question having arisen and has not concerned itself with the nature or extent of advance discussions: see the Dunlop of Canada Limited case, OLRB Monthly Reports, April 1967, p. 95.

11. Even if it were proper for the Board to decline to entertain the application until further discussions had taken place, we are of the view that in this case no useful purpose would be served by further discussions. An important and clear-cut issue as to legal status has arisen and, from the positions taken by the parties at the initial hearing, it seems to us unlikely that the matter would be resolved by further direct discussions.

12. As an abstract proposition it may be desirable that the parties exhaust every reasonable effort to settle a dispute before coming to the Board under section 95(2). However, it has now been authoritatively established that the Board has exclusive jurisdiction to determine status questions of the kind raised in this application once either party invokes section 95(2): see Re Canadian Industries Limited and International Union of District 50, Allied & Technical Workers of the United States and Canada, Local 13328 (1972) 27 D.L.R. (3d) 387. Where jurisdiction is exclusive and where the conditions set out in the Act for its exercise have been fulfilled, it is, to say the least, questionable whether the Board may decline jurisdiction by postulating a requirement not found in the Act. If that was an alternative basis for the panel's rejection of the application in the Victoria Hospital, London, Ontario case, OLRB Monthly Reports, May 1970, p. 239, we would, with respect, decline to follow it.

13. In the particular circumstances of this case, the Board directs that the application proceed. Mr. D. K. Aynsley, Examiner, is authorized to inquire into and report to the Board on the duties and responsibilities of Peter A. Morozuk, Patrick Dewan and Edward Orpel, and the nature of their relationship with the respondent.

DECISION OF BOARD MEMBER J. D. BELL: June 24, 1974.

I dissent.

At the certification hearing before another panel of the Board on October 26, 1973, the parties, after discussion, agreed to the bargaining unit description as shown in paragraph 2, page 2 of the majority decision. The count was announced and the applicant had an opportunity to examine the lost cards.

In my opinion, the failure of the applicant to raise the issue of the disputed persons at that time must be taken as an expression of consent to their exclusion from the bargaining unit. Failure to challenge in order to obtain a quick certificate is "a device to gain an unfair advantage" (as in Davis Lumber (supra)).

I find that the applicant has waived its right to contest their status under section 95(2) of the Act and I would dismiss this application.

5787-74-R: Warehousemen and Miscellaneous Drivers Local 419 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. LEAMINGTON VEGETABLE GROWERS' CO-OPERATIVE LIMITED, OPERATING AS, G. SMITH PRODUCE COMPANY (Respondent) v. Group of Employees (Objectors).

BEFORE: T.E. Armstrong, Chairman, and Board Members D.B. Archer and W.H. Wightman.

APPEARANCES AT THE HEARING: I.J. Thomson for the applicant; P.J. Brunner and C.O. Spettigue for the respondent; Geremia Orgera and Ernest Reece for the objectors.

DECISION OF T. E. ARMSTRONG, Q.C., CHAIRMAN, AND BOARD MEMBER D. B. ARCHER: June 25, 1974.

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3. The Board further finds that all employees of the respondent at Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office and sales staff, constitute a unit of employees of the respondent appropriate for collective bargaining.

4. Of the eleven employees within the proposed bargaining unit, the applicant claimed all but three as members. However, there was filed a petition in opposition to the application signed by six persons, five of whom had originally signed as members of the applicant. The intervening employees were therefore afforded the opportunity of satisfying the Board that the petition represented the voluntary wishes of the signatories thereto.

5. Three persons testified as to the origination and circulation of the petition. Mr. Geremia Orgera stated that he prepared the document on or about June 5, 1974 at the home of his niece. It was

originally written in Italian, then translated into English by his niece and later transcribed by Mr. Orgera in his own handwriting. On June 6th and 7th he brought it to work with him and on those days, with the assistance of Mr. Ernest Reece, who also gave evidence, the six signatures were obtained.

6. The evidence adduced supports the following findings of fact.

- (a) While the petition was prepared by Mr. Orgera away from work, it was circulated by Messrs. Orgera and Reece and signed by all six employees at the respondent's warehouse during working hours.
- (b) Both Mr. Orgera and Mr. Reece were able to solicit support for the petition during their working hours without impediment or restriction from their superiors. Mr. Reece testified that he was engaged for about one-half hour in obtaining signatures, apparently without having to account for any lost time.
- (c) On the morning of June 7th, Mr. Orgera took the petition to the respondent's office manager, Mr. William Murphy, and asked Mr. Murphy to type it for him. Mr. Murphy retained the document in his possession for approximately ten minutes and, when he returned it to Orgera, stated that he wanted nothing to do with it and that even if he (Murphy) had wanted to type it he couldn't since the signatures were already on it.
- (d) Later that same morning Orgera was given permission to leave work, ostensibly to go to the bank but in reality to mail the petition to the Board. He was absent for approximately one-half hour and received his full pay for the day.
- (e) Finally, two witnesses, Messrs. Reece and Doucette, (both signatories to the petition) stated, without reservation that Mr. Orgera was a "boss". Under cross-examination Orgera conceded that other employees consider him to be a boss.

7. It bears emphasizing that the Board's consistent practice has been to place the onus on objectors to satisfy the Board, on the balance

of probabilities, that a petition represents the voluntary wishes of those signing it. Where, as here, the applicant files valid membership evidence on behalf of a substantial majority of the bargaining unit, the Board must be vigilant in assessing the purported repudiation of that original membership evidence and must be satisfied that there is credible and convincing evidence to show that the change of heart reflected in the petition is entirely voluntary.

8. While it may be that no one of the facts referred to in paragraph 6, standing alone, would be sufficient to cast doubt upon the voluntary nature of the document, we are concerned in this case about their cumulative effect. For example, the Board does not normally regard the fact that a petition is openly circulated during working hours as conclusive of management's support, even though that fact may invite such an inference. Similarly, the fact that the petition comes, unsolicited, into the possession of management following its circulation may be an entirely innocent or neutral occurrence. Where, however, these and other circumstantial events occur sequentially over a very short period of time, their combined effect may lead to legitimate doubts concerning the reliability of the document as an expression of the true wishes of the employees.

9. In the instant case there is the added question of Orgera's status. The only evidence before us indicates that he was regarded by his fellow employees as a "boss" - a fact conceded by Orgera himself. No evidence was tendered to contradict that assertion nor were any of the witnesses cross-examined on the point. Even though, following a full inquiry, the Board might conclude that Orgera was not excluded from the proposed unit under section 1(3)(b) of the Act, the fact remains that his fellow employees regard him as having authority over them. In the work place, the word "boss" surely connotes, in the clearest and most unequivocal way, superior authority. A petition sponsored and circulated by one believed by his fellow employees to be in such a position has been rejected by the Board in other cases: see for examples, Link Manufacturing, 1954 O.L.R.B. file No. 48682-53; The Great Atlantic and Pacific Tea Co. Ltd., O.L.R.B. Monthly Reports, November 1969, p. 947; Becker Milk Company Limited, OLRB Monthly Reports April, 1966, p. 37.

10. Mr. Orgera, asserted that the petition was his own idea and that he obtained no assistance from management. However, there are inconsistencies in his version of the events which cause us considerable difficulty. Under examination by the Board he stated not once but twice that the petition was either in his possession or in Mr. Reece's custody at all times and that it was given to no one else. It was only after the Board had completed its initial examination that Mr. Orgera conceded, under cross-examination, that he had given the document to Mr. Murphy, the respondent's office manager. Having regard to the specific and repeated questioning on this point and making due allowances for any language difficulty, it is difficult to account for this clear contradiction on the basis of a misunderstanding of the question.

Secondly, it is hard for us to understand why, in obtaining permission to leave the premises to post the petition, Mr. Orgera found it necessary to misrepresent to his superiors that he wished to go to the bank. The same morning he had made full disclosure to management that he was in possession of a petition opposing the union and had asked for management's assistance in having it typed. In the light of this disclosure, why would he find it necessary to conceal the true reason for his absence?

11. Having considered all of the above matters, as well as the submissions of the parties, there remains, at the very least, an unresolved doubt in our minds that the document reflects the voluntary wishes of the signatories. Since the onus rests upon the objectors to satisfy us on this point on the balance of probabilities and since they have failed to do so, we are unable to give the document any evidentiary weight.

12. The Board is satisfied on the basis of all the evidence before it that more than sixty-five per cent of the employees of the respondent in the bargaining unit at the time the application was made, were members of the applicant on June 10, 1974, the terminal date fixed for this application and the date which the Board determines, under section 92(2)(j) of The Labour Relations Act, to be the time for the purpose of ascertaining membership under section 7(1) of the said Act.

13. A certificate will issue to the applicant.

DECISION OF BOARD MEMBER W. H. WIGHTMAN: June 25, 1974.

Having regard to the fact that employees who may wish to petition against the intrusion of a trade union into their employment relationship rarely have knowledge of the requirements of the Labour Relations Act, let alone the further tests imposed by the Board in its examination as to the origins of the petition; having regard for the limited available to petitioners to organize their petition; and having regard to the fact that few such petitioners appear to recognize the need for counsel in these matters or possess the financial resources needed to retain counsel, I think it remarkable that the petitions do not contain more defects than has been the case.

In the instant case the originator of the petition, Mr. Orgera, acted as his own spokesman before the Board, notwithstanding some considerable and obvious difficulty with the language of the tribunal. Until that point in time when circulation of the petition had been completed and the signed petition given to the office manager, Mr. Murphy, with a request that Mr. Murphy type it, was there evidence of management having had an awareness as to the existence of the petition. I share the view of my colleagues that this unsolicited intelligence can properly be viewed as an entirely innocent or neutral occurrence.

The fact that the union claims Mr. Orgera's job as appropriately falling within the scope of the bargaining unit, coupled with the fact that this is not contested by the employer, perhaps explains why the union spokesman did not attach significance to the signatories to the petition (Messrs. Reece and Doucette) having referred to Mr. Orgera as a "boss". In any event, the union spokesman indicated he would "leave it to the Board" to decide what significance should be attached to these statements. In that the terms "supervisor" and "foreman" were used in other connections and in relation to other people, presumably the Board was free to conclude for itself how these employees viewed Mr. Orgera in relation to the management of this business. In my opinion it is as reasonable to assume they view Mr. Orgera as a lead hand, working foreman or straw boss as it is to assume they believed he was a member of management reflecting the wishes of management.

Provision in the legislation for certification votes leads me to conclude that our legislators intended the vote to be an important tool through which the Board may discharge its responsibility to ensure that it has determined the true wishes of a majority of the employees to be affected.

In light of the legislation and in light of the particular difficulties which petitioners face placing them at a relative disadvantage to both employers and unions, I find myself in disagreement with Board practice such as, in this case, where the decision apparently turns on cumulative effect. I would have thought the interests of the individual employees as well as the interest of industrial peace and stability would be better served had the petition been allowed and I would have exercised the Board's discretionary power to that effect.

5462-74-M: International Association of Machinists and Aerospace Workers (Applicant) v. TOLEDO SCALE, DIVISION OF RELIANCE ELECTRIC LIMITED (Respondent).

BEFORE: D. H. Kates, Vice-Chairman, and Board Members J. D. Bell and P. J. O'Keefe.

DECISION OF VICE-CHAIRMAN D. H. KATES AND BOARD MEMBER P. J. O'KEEFFE: June 28, 1974.

1. This is an application under section 95(2) with respect to the question as to whether Mrs. Joyce Robinson, secretary, is employed in a confidential capacity in matters relating to labour relations.

2. Mrs. Robinson was hired by the respondent in September, 1968 as a clerk-typist. She was a member of the office bargaining unit represented by the applicant trade union until November, 1973 when she was promoted to the position of secretary to Mr. M. Smith, Vice-President

in charge of sales. While under Mr. Smith's direction, Mrs. Robinson stated that she types up letters or memos relating to personnel regarding promotion and discipline. But in the same context she cited the example of typing a letter dictated by Mr. Smith as to how an employee should be paid his pension on retirement. Mrs. Robinson has access to confidential information regarding payroll notices to regional and branch managers and salesmen in the respondent's employ. She also is required to type matters the subject of which are considered by the employer to be confidential such as sale forecasts, annual, five year and long range plans of the respondent company. She also has access to sales personnel files for which she alone has the key.

3. Mrs. Robinson also stated that she does not attend meetings of management where company policies or matters relating to labour relations are discussed. She is not required to participate in any matters relating to negotiations with the respondent relating to terms and conditions of employment (including wages) of employees in the bargaining unit.

4. On the other hand Mrs. Robinson indicated she could type correspondence for Mr. Smith when he was contemplating hiring sales personnel and in fact she has done so. However, no incidents were related to the Board with respect to such matters. She also agreed that she could type letters suggesting discipline to be given employees under branch managers away from the home office. Although Mrs. Robinson stated she could type letters with respect to discipline, she indicated that she had not had to type any letters pertaining to the recommendation for discipline of any employees. She also agreed when the question was put that she would type out grievances replies if that were required of her. But she denied awareness that Mr. Smith was a management representative on grievances with respect to the application, administration and interpretation of the agreement affecting the office employees. And, in this regard, the respondent did not adduce any evidence to indicate that Mr. Smith indeed performed this function.

5. The Board has often repeated that employees access to confidential information in matters pertaining to labour relations standing by itself is no reason to exclude such employees from the bargaining unit. (see; Metropolitan Separate School Board Case OLRB M.R. April 1974 220). And the fact that an employee may have knowledge of the salaries of management personnel is not sufficient to exclude such persons from the purview of the Act (see; No Sag Spring Co. Ltd. OLRB M.R. December 1966 667). Furthermore, mere knowledge of matters that are characterized by the employer as "confidential" but do not pertain to matters relating to labour relations will not justify depriving an employee of representation for collective bargaining purposes. (see; Comtech Group Limited OLRB M.R. May 1974 291).

6 Bearing these principles in mind, the Board, in applying the evidence to the intent and purpose of excluding "persons engaged in a confidential capacity in matters relating to labour relations", finds Mrs. Robinson to be an employee for purposes of the Act.

7 There was evidence contained in the Examiner's Report that indicated that if Mr. Smith sat on grievances involving office employees. Mrs. Robinson agreed she would be the one required to type the replies. She also stated that she was not aware that Mr. Smith indeed performed these functions. If Mr. Smith was employed in this capacity and did deal with grievances then, surely it was incumbent upon the respondent to adduce such evidence directly either through Mr. Smith himself, or some other witness. We do not wish this decision to be interpreted to mean that secretaries to personnel who are employed in the disposition of grievances will not necessarily be excluded from operation of the Act under Section 1(3)(b). What the Board wishes to be made crystal clear is that we will only make findings based on evidence and not simple conjecture.

DECISION OF BOARD MEMBER J.D. BELL: June 28, 1974.

I dissent.

Based on the evidence contained in the Examiner's Report there is no doubt in my mind that Mr. Smith, besides being managerial, carries out duties which pertain to labour relations. Therefore, Mrs. Robinson, in carrying out her duties and responsibilities as secretary to Mr. Smith is "a person engaged in a confidential capacity in matters relating to labour relations.

I find that she is not an employee for purposes of the Act.

QNLK

054

Unrecorded
Reference

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3. Mrs. Robinson also stated that she does not attend meetings of management where company policies or matters relating to labour relations are discussed. She is not required to participate in any matters relating to negotiations with the respondent relating to terms and conditions of employment (including wages) of employees in the bargaining unit.

4. On the other hand Mrs. Robinson indicated she could type correspondence for Mr. Smith when he was contemplating hiring sales personnel and in fact she has done so. However, no incidents were related to the Board with respect to such matters. She also agreed that she could type letters suggesting discipline to be given employees under branch managers away from the home office. Although Mrs. Robinson stated she could type letters with respect to discipline, she indicated that she had not had to type any letters pertaining to the recommendation for discipline of any employees. She also agreed when the question was put that she would type out grievances replies if that were required of her. But she denied awareness that Mr. Smith was a management representative on grievances with respect to the application, administration and interpretation of the agreement affecting the office employees. And, in this regard, the respondent did not adduce any evidence to indicate that Mr. Smith indeed performed this function.

5. The Board has often repeated that employees access to confidential information in matters pertaining to labour relations standing by itself is no reason to exclude such employees from the bargaining unit. (see; Metropolitan Separate School Board Case OLRB M.R. April 1974 220). And the fact that an employee may have knowledge of the salaries of management personnel is not sufficient to exclude such persons from the purview of the Act (see; No Sag Spring Co. Ltd. OLRB M.R. December 1966 667). Furthermore, mere knowledge of matters that are characterized by the employer as "confidential" but do not pertain to matters relating to labour relations will not justify depriving an employee of representation for collective bargaining purposes. (see; Comtech Group Limited OLRB M.R. May 1974 291).

6. Bearing these principles in mind, the Board, in applying the evidence to the intent and purpose of excluding "persons engaged in a confidential capacity in matters relating to labour relations", finds Mrs. Robinson to be an employee for purposes of the Act.

7. There was evidence contained in the Examiner's Report that indicated that if Mr. Smith sat on grievances involving office employees. Mrs. Robinson agreed she would be the one required to type the replies. She also stated that she was not aware that Mr. Smith indeed performed these functions. If Mr. Smith was employed in this capacity and did deal with grievances then, surely it was incumbent upon the respondent to adduce such evidence directly either through Mr. Smith himself, or some other witness. We do not wish this decision to be interpreted to mean that secretaries to personnel who are employed in the disposition of grievances will not necessarily be excluded from operation of the Act under Section 1(3)(b). What the Board wishes to be made crystal clear is that we will only make findings based on evidence and not simple conjecture.

DECISION OF BOARD MEMBER J.D. BELL: June 28, 1974.

I dissent.

Based on the evidence contained in the Examiner's Report there is not doubt in my mind that Mr. Smith, besides being managerial, carries out duties which pertain to labour relations. Therefore, Mrs. Robinson, in carrying out her duties and responsibilities as secretary to Mr. Smith is "a person engaged in a confidential capacity in matters relating to labour relations."

I find that she is not an employee for purposes of the Act.

5744-74-M: PLUMMER MEMORIAL PUBLIC HOSPITAL, SAULT STE. MARIE, ONTARIO
(Employer) v. Service Employees Union Local 268 (Trade Union).

BEFORE: Rory F. Egan, Alternate Chairman, and Board Members J. D. Bell and A. Main.

APPEARANCES AT THE HEARING: Lloyd J. Valin and T. Yukich for the employer; B. A. Dunn and L. O'Brien for the trade union.

DECISION OF THE BOARD: July 2, 1974.

1. The Minister has referred to the Ontario Labour Relations Board pursuant to section 96 of The Labour Relations Act the question as to whether he has the authority under The Labour Relations Act to appoint a conciliation officer.

2. The facts underlying the reference are set out below. The employer and the trade union entered into a collective agreement on August 17, 1973. The agreement runs from January 1, 1973 through to December 31, 1974. In Section 3.01 of that agreement the hospital recognizes the union as the exclusive bargaining agent for "all lay employees" subject to certain exceptions not here relevant. On November 7, 1973, the employer took over certain ambulance services from the emergency health service. As a result, a number of casualty care attendants and dispatchers (hereinafter referred to as "ambulance workers") became employees of the employer.

3. On November 19, 1973, the Canadian Union of Public Employees applied to be certified (Board File No. 4791-73-R) for an "all employee" unit subject to a number of exceptions. One of the exceptions was employees within the unit represented by the Service Employees Union. It was clearly the intention of CUPE to gain bargaining rights solely for the ambulance workers, and this was the basis upon which both the Board and the parties treated the application.

4. The Board dismissed CUPE's application in a decision dated December 28, 1973. The relevant parts of the Board's decision follow:

The respondent is party to a collective agreement dated March 17, 1971 with the intervener. The recognition clause of this agreement provides for an "all lay employee" bargaining unit and there are no specific exclusions covering the employees subject to this application. It is the position of both the respondent and the intervener that these employees constitute an accretion to the bargaining unit. The applicant, on the other hand, maintains that these ambulance personnel comprise an appropriate tag-end unit in themselves.

Having reviewed all of the circumstances of this case and taking into account the principles as set out in the Religious Hospitallers of St. Joseph of the Hotel Dieu of Kingston Case (1971) OLRB Rep. 461, the Ajax and Pickering General Hospital Case (1972) OLRB Rep. 477 and the Parry Sound District General Hospital Case (Board File No. 2626-73-R), we find that the bargaining unit as proposed by the applicant is not appropriate for collective bargaining.

5. Neither the St. Joseph nor the Parry Sound cases are particularly helpful here. Both dealt with instances where only the operating

engineers and stationary engineers, respectively, were within a bargaining unit. In those cases, the Board held that it would not certify a separate unit of ambulance workers since an "all employee" unit was more appropriate. The Ajax and Pickering General Hospital cases, however, is directly on point. There, in a situation almost identical to the instant case, the majority of the Board held (at p. 478):

In clear unambiguous language Article 2, Paragraph 2 of the agreement states that CUPE is the bargaining agent for all the employees of the hospital at Ajax with certain exceptions not here relevant. Consequently, as the employees classed as casualty care technicians, dispatchers and senior attendants are not one of the specific exclusions...under Article 2, paragraph 2.01 of the agreement, we find that they were automatically included in the all employee bargaining unit when they commenced to work for the hospital on or about March 1st, 1971.

The chairman of the panel hearing the case (Mr. Shime) wrote a separate but concurring decision.

6. Elaborating on a telegram of the previous day, the Service Employees Union in a letter to the hospital dated November 13, 1973 asked that the hospital meet with it "to negotiate an agreement" with respect to the ambulance workers.

7. In a letter to the union dated March 13, 1974, the hospital refused to bargain, taking the position that it had a collective agreement of fixed duration for a bargaining unit which included the ambulance workers. The hospital also stated that it would "continue with the present policies of the Ambulance Department" subject to a 7% wage increase.

8. The union in a letter dated March 25, 1974 to the hospital indicated that it would like to negotiate a suitable addendum to the existing agreement. On April 16, 1974, the union applied for conciliation. On April 19, 1974, the hospital formally objected to the appointment of a conciliation officer on the grounds that the ambulance workers form part of the unit covered by the subsisting collective agreement.

9. Counsel for the union in a letter dated May 8, 1974 to the Deputy Minister pointed out that the ambulance workers "were not members of the bargaining unit at the date of the collective agreement. The collective agreement provides no classification for these employees who are in the ambulance department". Counsel also made the statement that:

On the basis of previous Labour Relations Board decisions, and specifically, International Association of Bridge, Structural and Ornamental Ironworkers Local Union 721 vs. Frankel Structural Steel Limited, reported in the January 1966 Labour Relations Board Monthly Report, at page 744, the Collective Agreement is not a bar to an application for certification of a group of additional employees and by extension of this principal, should not be a bar to an application for conciliation services to be provided for an additional department added on to an existing unit.

10. The existing unit in the Frankel Case (*supra*) was not an all employee unit but was one restricted by work assignment.

11. The Board in dismissing CUPE's application, though it did not specifically say so, clearly took the position that the ambulance workers were in the bargaining unit covered by an existing agreement with the Service Employees. This interpretation is buttressed by the Board's reference to its earlier decision in the Ajax and Pickering General Hospital Case. We respectfully concur and find that the ambulance workers comprise an accretion to the bargaining unit described in the collective agreement. To grant conciliation in such circumstances as exist here would be untenable under the Act. The purpose of conciliation as set out in section 15(1) and section 17(1) is to aid parties to effect a collective agreement. The above subsections provide as follows:

15(1) Where notice has been given under section 13 or 45, the Minister, upon the request of either party, shall appoint a conciliation officer to confer with the parties and endeavour to effect a collective agreement.

17(1) Where a conciliation officer is appointed, he shall confer with the parties and endeavour to effect a collective agreement and he shall, within fourteen days from his appointment, report the result of his endeavour to the Minister.

12. As already indicated, the ambulance workers in the present case are now in a unit covered by an existing collective agreement. It is true, as the union argued, that as a classification the ambulance workers have not had the benefit of conciliation services with respect

to the establishment of wages and working conditions. Accretion to the bargaining unit occurring during the currency of the collective agreement is not, however, a situation provided for in the Act in those sections dealing with the appointment of conciliation officers. There is, therefore, no power to appoint a conciliation officer in the situation under review.

13. The answer to the Minister is therefore "No".

4118-73-R: United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 46 (Applicant) v. WARNOCK HERSEY INTERNATIONAL LIMITED - PROFESSIONAL SERVICES DIVISION (Respondent).

BEFORE: R. A. Furness, Vice-Chairman, and Board Members D. B. Archer and J. D. Bell.

APPEARANCES AT THE HEARING: L. C. Arnold for the applicant; C. G. Riggs for the respondent.

DECISION OF R. A. FURNESS, VICE-CHAIRMAN, AND BOARD MEMBER J. D. BELL: July 2, 1974.

1. We find that the applicant is a trade union within the meaning of section 1(1)(n) of The Labour Relations Act.
2. The applicant is seeking certification on behalf of a bargaining unit described as:

"All employees of the respondent working in or out of Metropolitan Toronto and the City of Hamilton, engaged in non-destructive testing work, which includes industrial radiography, ultra-sonics, magnetic particle and dye penetrant, save and except non-working foremen, and those above that rank, visual inspectors, office and sales staff, students employed during the summer vacation and part-time employees working less than 24 hours per week".

3. The respondent adopts the position that the unit of employees appropriate for collective bargaining consists of:

"All employees of the Professional Services Division of the respondent working at or out of its Toronto and Hamilton offices, save and except supervisors, persons above the rank of supervisor, professional engineers and chemists, office and

sales staff, persons regularly employed for not more than twenty-four hours per week, students employed during the school vacation period and students employed on a co-operative training programme".

4. The respondent operates a business of materials engineering, inspection and testing across Canada. The respondent, through its Professional Services Division, operates a number of departments which are as follows: (1) Soils department; (2) Concrete department; (3) Inspection services; (4) Appraisals; (5) Physical testing; and (6) N.D.T. Services (non-destructive testing). The problem involved here in defining the appropriate bargaining unit is to determine whether the smaller unit of employees (radiographers) of the respondent in the N.D.T. services rather than the much larger Professional Services Division of the respondent is the unit of employees appropriate for collective bargaining.

5. The Board appointed an Examiner and the he conducted a series of meetings with the parties and received numerous exhibits which were filed in connection with his report. The merits of the parties' points of views were fully argued before the Board and we now propose to review the arguments addressed to the Board.

6. The respondent is engaged in the job of providing, testing and inspection services to industry and government. In addition to radiographers, the respondent employs inspectors, technicians, technologists and appraisers in its six departments. However, all of the radiographers work in the N.D.T. department. The respondent has 35 employees who work in its six departments at Hamilton and Toronto. On the other hand, the respondent employs ten radiographers in its N.D.T. department in Toronto and Hamilton.

7. The applicant is applying for the unit of employees of the respondent referred to in paragraph #2 herein while the respondent claims that an "all employee" unit is the bargaining unit which is appropriate in the circumstances of this application. The applicant bases its claim that the unit for which it is seeking is appropriate on two grounds. Firstly, the applicant argues, that this unit of employees is appropriate for collective bargaining by virtue of the provisions of section 6(2) of The Labour Relations Act. Secondly, and in the alternative, the applicant argues that the unit of employees for which it is seeking certification is in itself an appropriate bargaining unit under the provisions of section 6(1) of The Labour Relations Act. The respondent argues that the unit for which the applicant is seeking certification is not appropriate either under the provisions of section 6(2) or section 6(1) of The Labour Relations Act and that the only unit of employees that is appropriate for collective bargaining consists of all employees in its professional services division.

8. In order to establish an entitlement to a bargaining unit determined under the provisions of section 6(2) of The Labour Relations Act, the applicant must demonstrate that the provisions of section 6(2) of The Labour Relations Act are satisfied. Consequently, the applicant must satisfy the Board: (1) that the group of employees exercise technical skills or are members of a craft by reason of which they are distinguishable from other employees, (2) that they commonly bargain separately and apart from other employees through a trade union, that according to established trade union practice, pertains to such skills or craft; and (3) that the application is made by a trade union pertaining to such skills or craft. While there is some indication in the evidence that radiographers exercise technical skills by reason of which they are distinguishable from other employees and while it may perhaps be said that the application is made by a trade union pertaining to such skills or craft, the applicant, in our view, faces serious problems in satisfying the second condition referred to in this paragraph.

9. The applicant introduced evidence showing certifications and collective agreements in Alberta, British Columbia and Nova Scotia with respect to radiographers. With one exception, the record indicates that in instances where the applicant has been certified solely for radiographers, the bargaining units contained in such certificates have invariably been determined in terms of "all employees" and, of course, the collective agreements which have resulted from some of these certificates have naturally referred to the sole classification (radiographers) employed by the employers which are parties to such collective agreements. However, in the only example in which radiographers are employed together with other employees engaged in testing and inspection work, the British Columbia Labour Relations Board determined that the appropriate bargaining unit was "all employees" rather than all radiographers. The collective agreement which flowed from this certificate indicates that the radiographers in that case have been included with other personnel engaged in testing and inspection work.

10. The evidence before the Board thus establishes that there is no history of radiographers commonly bargaining separately and apart from other employees through a trade union that according to established trade union practice, pertains to such skills or craft. It can hardly be said that bargaining units determined across Canada for "all employees", consisting of radiographers as the sole employees and which in some instances resulted in collective agreements covering radiographers (the only category employed by the company concerned in testing and inspection) establish that they commonly bargain separately and apart from other employees through a trade union that according to established trade union practice, pertains to such skills or craft.

11. In our view, the applicant has not satisfied all of the conditions set forth in section 6(2) of The Labour Relations Act. Accordingly, it is not necessary for the Board to deal with a problem raised by the applicant that its alleged practice under the second condition of section 6(2) of The Labour Relations Act dates back to the later part of 1971 and that such a short period may not satisfy the second condition referred to in section 6(2) of The Labour Relations Act. We therefore find that the unit for which the applicant is seeking certification is not appropriate for collective bargaining under the provisions of section 6(2) of The Labour Relations Act.

12. We now turn our attention to the alternative argument of the applicant that the unit for which it is seeking certification is an appropriate unit under section 6(1) of The Labour Relations Act. The evidence contained in the report of the Examiner indicates that all six departments of the respondent's professional services division are engaged in various aspects of testing and inspection. The report is replete with examples of one or more of the respondent's six departments being retained and working on the same project or problem. In addition, there are examples of persons from one department being interchanged and working with employees of other departments. In addition, in our view, the respondent's professional services division is staffed by employees who exercise a variety of similar skills and who apply such skills to essentially related problems. We are not persuaded that the radiographers in the N.D.T. department of the respondent's professional services division share a community of interest separate and apart from the other employees of the respondent in its professional services division. Neither source of work, type of work, method of supervision, conditions of work nor skills exercised by the radiographers persuade us that the unit for which the applicant is seeking certification is an appropriate unit under the provisions of section 6(1) of The Labour Relations Act.

13. Having regard to the foregoing, the Board finds that all employees in the Professional Services Division of the respondent working at or out of its Toronto and Hamilton offices save and except supervisors, persons above the rank of supervisor, professional engineers and chemists, office and sales staff, persons regularly employed for not more than twenty-four hours per week, students employed during the school vacation period and students employed on a co-operative training programme, constitute a unit of employees of the respondent appropriate for collective bargaining.

14. We are satisfied on the basis of all the evidence before us that less than thirty-five per cent of the employees of the respondent in the bargaining unit, at the time the application was made, were members of the applicant on July 27, 1973, the terminal date fixed for this application and the date which the Board determines, under

section 92(2)(j) of The Labour Relations Act, to be the time for the purpose of ascertaining membership under section 7(1) of the said Act.

15. In the result, this application is dismissed.

For reasons to be given in writing, Board Member D. B. Archer dissents.

3953-73-R: International Printing Pressmen and Assistants Union (I.P.P. & A.U.) of North America (Applicant) v. TORONTO STAR LIMITED (Respondent) v. Toronto Mailers' Union No. 5 (Intervener).

BEFORE: P.J. O'Keefe and F. W. Murray, Board Members and Vice-Chairman, D. H. Kates.

APPEARANCES AT THE HEARING: T. Dunne, R. Pryor for the applicant; R. Weiler, C. Davies and K. Feldman for the respondent; W. J. Bull for the intervener.

DECISION OF BOARD MEMBERS P. J. O'KEEFFE AND F. W. MURRAY: July 3, 1974.

1. The Board finds that the applicant is a trade union within the meaning of section 1(1)(n) of The Labour Relations Act.

2. This is an application for certification in which the question arose as to whether the intervener union had abandoned its bargaining rights. The Board in its decision dated May 24, 1974, found in that decision that the Intervener Union had not abandoned its bargaining rights.

3. This matter was put on for hearing on June 26th, 1974, with respect to all outstanding issues.

4. Counsel for the Applicant urged this Board to make a finding that the appropriate unit would consist of a bargaining unit confined to the geographical area of Vaughan Township instead of the unit now represented by the Intervener Union which has no geographical limitation.

5. Having regard to all of the evidence in this matter we find that since this application represents an application to displace the present incumbent Intervener Union and having regard to past practice in this type of application, we find that the appropriate constituency bargaining unit is the unit set out in the expired collective agreement between the respondent company and the Intervener Union.

6. The Board is satisfied on the basis of all the evidence before

it that less than thirty-five per cent of the employees of the respondent in the bargaining unit, at the time the application was made, were members of the applicant on June 25, 1973, the terminal date fixed for this application and the date which the Board determines under section 92(2)(j) of The Labour Relations Act, to be the time for the purpose of ascertaining membership under section 7(1) of the said Act.

7. The application is therefore dismissed.

DECISION OF VICE-CHAIRMAN D. H. KATES: July 3, 1974.

1. I dissent.

2. The Board in its majority decision dated May 24, 1974 stated that "...in the exercise of our jurisdiction...leaving to all employees the option of selecting a trade union of its own choice through the process of a representation vote is more in keeping with the aims and purposes of The Labour Relations Act.

3. The inevitable consequence of the decision of the majority on the issue of the appropriate bargaining unit is to deprive the employees of the respondent in the Town of Vaughan of a fundamental freedom underlying the very objective of the Act. I am of the view that the situation facing the Board in the instant application is not a circumstance where bargaining rights are being displaced in the manner contemplated by the Boards past policy considerations. Never has this Board in its long history been confronted with a situation where bargaining rights for employees have been retained as a result of a protracted but lost strike. Furthermore, during that interim, the rights held by the intervener for the employees at Vaughan accrued not from any test of its representative capacity but rather by the fortuitous application of a presumption of an accretion of bargaining rights in the face of a scope clause unrestricted by any geographic limitation. This collective agreement having long expired and having never been renewed when these employees were initially hired by the respondent employer has long since ceased to have any relevance to the respondent's operations at Vaughan.

4. The reason for holding as appropriate the bargaining unit described in the scope clause of a collective agreement in a displacement application is because of the continued viability of the community of interests of employees affected by the application. It would be contrary to the efficacy of a past history of viable collective bargaining to upset the integrity of that bargaining unit without first soliciting the views of the employees affected. It the instant application the viability of an all province wide unit through the effluxion of time alone is proof of its intrinsic unworthiness.

5. The Board is in possession of a wide, unfettered discretion under section 6(1) in determining the appropriate bargaining unit. Having regard to the policy considerations applied by this Board in measuring the community of interests of employees, I would have confined the scope of the bargaining unit to employees at the Town of Vaughan. The result of holding as appropriate the bargaining unit described in an expired collective agreement negotiated some ten years prior to the date of the instant decision is to put the employees affected at Vaughan in an intolerable dilemma. By the inflexible application of a rule reserved to displacement situations, these employees are having foisted upon them a bargaining agent that may have no representative constituency. And of even greater concern is the fact that they may have been denied representation by a bargaining agent whose allegiance that union may very well have commanded. Surely, in the circumstances described herein allowing these employees the opportunity to choose between the applicant and intervener by means of a representation vote is a matter properly within this Board's power to achieve.

5470-74-U: Ward Shellington and Those Persons Named In Schedule "A" Attached Hereto (Complainants) v. IMPERIAL TOBACCO PRODUCTS (ONTARIO) LIMITED, TOBACCO WORKERS INTERNATIONAL UNION, LOCAL 323, CHARLES HILL, ALEXANDER JACKSON, SYDNEY HARKER, JOHN WYND, ALBERT BATTELL, ANSTRUTHER WILLIAMSON, GEORGE JONES, HARVEY STEWART, LESLIE COOK AND BRUCE STARKEY (Respondents).

BEFORE: G. W. Adams, Vice-Chairman, and Board Members P. J. O'Keeffe and J.E.C. Robinson, Q.C.

APPEARANCES AT THE HEARING: R. D. Koskie, W. Shellington and A. Groves for the complainants; T. F. Storie, P. Gagnon and M. Hastey for the respondent Imperial Tobacco Products (Ontario) Limited; Jeffrey Sack, R. D. Gauvreau, S. Kelly and G. Hill for the other respondents.

DECISION OF VICE-CHAIRMAN G. W. ADAMS, AND BOARD MEMBER P. J. O'KEEFFE: July 3, 1974.

1. This is a group complaint filed under the provisions of section 79 of The Labour Relations Act.

2. The complaints arise out of an alleged unjustified interference with seniority rights and, while recognizing that only a few common exhibits are before the Board without any accompanying viva voce evidence, a summary of the counsels' preliminary remarks is need to put the issues facing the Board in perspective. All of the complainants are employees of the respondent company and are either graduates of an

apprenticeship plan aimed at developing employees in the skilled trades or they are employees presently engaged in learning and assisting in a trade under the apprenticeship plan. The plan is said to have been inaugurated between the respondent company and respondent union on May 3, 1967. However, apparently because the program is lengthy and arduous and possibly because of the limited time it has been in effect, of the approximately 130 tradesmen employed by the company most are people who did not apprentice with the company pursuant to the plan. In fact, the complainants appear to represent all the people who have passed through the plan or are presently attempting to do so. The gist of their complaint is that when an employee graduates from the plan the respondents conspire to defeat the full extent of his seniority rights - seniority rights derived from the collective agreement between the respondent union and respondent company. Article 11.11 of this collective agreement reads:

11.11 Seniority dates from the employee's original date of employment.

3. In support of these allegations, as well as by way of an illustration, counsel for the complainants outlined the alleged interference with the seniority rights of one of the complainants - Mr. A. Groves. In a document entitled Revised December 31, 1973 - Imperial Tobacco Products (Ontario) Limited Hourly Rated Employee Seniority List, Mr. Groves's name appears as follows:

<u>Clock No.</u>	<u>Name</u>	<u>Date of Seniority</u>
33250	Groves, Allan	November 9, 1959

Whereas, in a document entitled Seniority List of all Plant Tradesmen, his name appears with quite a different implication.

<u>Payroll No.</u>	<u>Name</u>	<u>Date of Seniority</u>
33250	A. Groves	Mar. 8, 1971

However, it should be noted that the date November 9, 1959 is written beside this latter typewritten entry. It is alleged that this discrepancy exists or will exist for all of the complainants and that in a number of situations, since early 1974, the company has acted in accord with the seniority date reported in this second document, to the detriment and prejudice of the employees involved and in violation of their alleged true entitlement to seniority by virtue of Article 11.11 of the collective agreement.

4. The complainants allege that since early in 1973 the individual respondents have conspired with each other to defeat the seniority rights

of the tradesmen who have successfully completed their apprenticeship with the company (some 15 of the 130 tradesmen are "ex-apprentices" with the company) and, as a result of this conspiracy, have caused the company to calculate the seniority rights of the fifteen people involved from the date they completed the apprenticeship plan rather than "from the employee's original date of employment" as it is said to be prescribed by Article 11.11 of the collective agreement.

5. By way of background, and yet critical to understanding the complaints, Mr. Koskie, counsel to the complainants, told the Board that he would establish that there has never been a provision in the collective agreement to treat the seniority of tradesmen other than as envisaged by Article 11.11; moreover, he contended that there has not been any valid amendment to the collective agreement in this regard. In respect to this latter point, he alleged that in October of 1972 the Canadian Union of Operating Engineers attempted to "carve out" the tradesmen in a certification application but were unsuccessful [see Canadian Union of Operating Engineers v. Imperial Tobacco Products (Ontario) Ltd.; Tobacco Workers International Union, Local 323; Ontario Labour Relations Board and Attorney General for Ontario, 73 CLLC ¶14, 195 (Ont. H.C.)]. Following this attempt, it is alleged that on February 24, 1973, at a general membership meeting of the respondent union, the following motion was defeated:

That apprentices, on completion of the training program, will be at the bottom of the seniority list of the trade group.

And following this event, it is alleged that in June 1973, as a result of discussions with the International Union, a Trades Committee was established, the officers of which are said to be people who have not apprenticed with the company, and that this Committee then set about to arrange a reduction of the complainant's seniority with the respondent company. Accordingly, aside from Charles Hill who is the President of Local 323 (and a tradesmen), all of the individual respondents are officers of the Trades Committee.

6. It is to be noted that the complainants submitted Exhibit 12 entitled Bylaws of T.W.I.U. Local 323 and in accord with item 31 reading "[to] accept proposed recommendations of amendments to by-laws of Tobacco Workers International Union, Local 323, to set up a Trades Committee", the following document entitled Proposed Amendments to By-Laws of Tobacco Workers' International Union, Local 323 is appended:

1. The tradesmen are to be permitted to set up a trades committee and the trades committee is empowered to deal directly with the company with

respect to any matters involving tradesmen. If the result of such discussions affects the operation of the collective bargaining agreement between the union and the company, the general membership must be asked to approve any matters before the same are implemented.

2. In negotiating a renewal of the collective bargaining agreement the tradesmen are entitled to draft their own proposals and to vote on the same without submitting them to a general membership meeting. In negotiations with the company the tradesmen are entitled to speak on their own behalf. Before any agreement is entered into with the company with respect to any matters affecting tradesmen or non-tradesmen, the general membership is required to ratify the whole of any proposed agreement. Prior to any proposals being discussed with the company the tradesmen and non-tradesmen are required to apprise each other of their proposals. There shall only be one set of negotiations with the company at which both the spokesmen for the tradesmen and non-tradesmen shall be present.

7. Mr. Koskie said he will establish that in early 1974 the respondent company began to apply lower seniority with regard to "ex-apprentice" tradesmen, contrary to their wishes, and that this change in seniority was not allowed to be approved by the general membership as, he asserted, is required by the above mentioned By-Laws.

8. Mr. Sack, counsel to the respondent trade union, again by way of introductory statement, submitted that there had been no failure to comply with the collective agreement. In referring to the May 3, 1967 document outlining the apprenticeship plan, he noted that on page 6 the following paragraph appeared:

Trade Seniority

Upon satisfactory completion of his apprenticeship, the prevailing practice regarding seniority in the plant concerned will apply.

He argued that this plan was part of the collective agreement; that the prevailing practice was in accord with the existence of a separate seniority stream for tradesmen as opposed to others; and that the collective agreement explicitly recognizes such differences. Moreover, in this latter regard, he directed the Board's attention to Article 11.01 and 11.02 which read:

- 11.01 In laying off employees not classified in Special Schedules, plant seniority shall govern and the last of these employees shall be the first laid off.
- 11.02 In laying off employees classified in Special Schedules, seniority shall govern and the last employee hired shall be the first laid off within the specific trade or special skill in which the employees are classified and in which the employee-force is being reduced. These employees shall have the right of exercising their plant seniority before being laid off.

It was his contention that the references to "Special Schedules" in these Articles were explicit references to Exhibits 3 and 4 - the documents that outlined tradesmen seniority, in contrast to other hourly rated employee seniority.

9. As a consequence, Mr. Sack submitted that the prevailing practice, as recognized by the collective agreement, is that an employee get seniority in the trades group at the completion of the apprenticeship program. Moreover, one incident in 1970 involving an apprentice, who was at the same time a representative of the union, led to the union and company confirming the practice at that time. However, according to Mr. Sack, in 1973, the company began to diverge from the practice in relation to vacation scheduling - but that, on being confronted with the deviance, the company agreed to revert to the previous understanding or practice. In other words, Mr. Sack took the position that there had been no violation of the collective agreement or of the tradesmen's by-laws and that the seniority arrangement was not a product of invidious discrimination but rather the product of a resolution of legitimate but conflicting interests within the trade union.

10. Mr. Storie, counsel to the company, made a few introductory remarks as well. He contended that the company had violated nothing and has simply followed the prevailing practice (presumably that outlined by Mr. Sack) since 1970.

11. Having outlined this extensive background to the complaints - a background that depends more upon counsels' opening statements than upon real evidence before the Board - it is now necessary to deal with a number of difficult preliminary objections raised by counsel to the respondents. It was the Board's view that its resolution of these preliminary issues would be best understood and appreciated within this context of "possible" facts.

12. While Mr. Sack responded to Mr. Koskie's introductory remarks on the merits, counsel to the trade union raised both a specific preliminary objection to the validity of any individual being named as respondents and a more general preliminary objection to the appropriateness of this Board entertaining the complaints before alternative and readily available remedies had been pursued either under the collective agreement or under the constitution of the respondent trade union. In fact, with regard to the availability of arbitration, Mr. Sack's argument was more in the vein of complete Board deference to that process, as opposed to a mere exhaustion of remedies. Moreover, in the same manner, Mr. Storie questioned the validity of the company being named as a respondent to the complaint and, it can be assumed, although he did not argue the matters, that he intends to "ride the coattails" of Mr. Sack's arguments on the exhaustion of alternative remedies. All of these arguments must be set out in some detail.

13. Mr. Sack's first preliminary point was that the individual respondents were not proper parties to the proceeding and thus the complaints against them should be dismissed at the outset. Elaborating this argument, he pointed out that section 60 of the Act was the foundation to the complaints and this section was directed at "a trade union or council of trade unions". It is not directed to persons, employees, or, as Mr. Storie argued, employers. When the Legislature intended to address a provision to individuals or employers, it did so specifically, contended Mr. Sack. In this regard, he drew the Board's attention to the variety of language found in sections 56, 57, 58, 59(1), 59(2), 61, 65, 66, 67 and 69 in contrast to that found in section 60. He argued that all of these sections reflected a deliberate use of different words and these differences have been recognized by the Board in previous decisions. For instance, the Board has held that the language found in section 65 does not envisage that a trade union can be in violation of that portion of the section proscribing the counselling of an unlawful strike (J. A. Service and Son Ltd., OLRB M.R. July, 1962, p. 138; Rapid Type Setting Co. Ltd., OLRB M.R. Oct. 1969, p. 875). Thus, it was Mr. Sack's submission, as well as Mr. Storie's, that only a trade union or council of trade unions could be in violation of Section 60. A complaint founded on this section could not be made out against individuals or employers.

14. However, in light of the obiter found in the Board's decision of Gebbie and Longmoore v. U.A.W. Local 200 and Ford Motor Co. of Canada Ltd. (OLRB M.R. Oct. '73 p. 519), both Mr. Sack and Mr. Storie felt it necessary to make a parallel argument in relation to the variety of wording found in Section 79 of the Act. Both counsel argued that Section 79 was a procedural section (i.e., the section in and of itself cannot be violated and thereby found a complaint under the Act). Furthermore, it was their contention that a complaint under section 60 had to be processed under section 79 in accord with section 79(1)(c) and section

79(4)(c) and that the words "a trade union, council of trade unions, employer, employers' organization, person or persons" found in each sub-section were addressed to the respective substantive provisions mentioned in these sub-sections. They contended, in other words, that an employer or an individual could not violate section 79 nor does section 79 envisage an employer or individual being joined to a complaint solely for remedial purposes. (Percy Woods v Napanee Industries Ltd., OLRB M.R., Nov. 1971, p. 730; O'Keeffe v. Teamsters Local 880 and Ryancrete-Sterling Products, OLRB M.R., April 1972, p. 298; O'Donnell v. Amalgamated Meat Cutters and Steinberg's Ltd., OLRB M.R. May, 1972, p. 423) The legislative draftsmen inserted the words "a trade union, council of trade unions, employer, employers' organization, person or persons" in section 79(1)(c) and (4)(c) in reference to the substantive provisions mentioned in these subsections. Thus, section 60 is mentioned and hence the reference to "a trade union or council of trade unions". Clause (b) of subsection (2) of section 71 is mentioned and hence the reference to "person or persons" as well as trade unions. Subsection (1) or (2) of section 119 is mentioned and hence the reference to "employer" as well as, once again, the reference to "person or persons" and "trade union or council of trade unions". Finally, sections 120, 121 and 122 are mentioned and hence the reference to "employers' organization". Concluding this part of his argument, Mr. Sack noted that the second reference to these words in section 79(4)(c) was preceded by the definite article "the" making the relationship between each word and its substantive section clear, in contrast to the indefinite article "any" preceding the word "person" in sections 81(1) and (9). It was his submission that section 81 illustrated that when the Legislature intended to join a person only for remedial purposes, it did so specifically.

15. Mr. Sack's second preliminary point questioned the appropriateness of the Board entertaining a complaint against a trade union or individual when the alternative remedy of grievance arbitration was available to the complainants under the collective agreement. He submitted that section 79, because of the presence of the word "may", was a discretionary or permissive section and that in complaints encroaching upon the jurisdiction of labour arbitrators under a collective agreement the Board has consistently exercised this discretion by deferring to that process except in exceptional circumstances. In this latter regard he cited Canadian Acme Screw and Gear Limited, 54 CLLC ¶17,083; John Inglis Co. Ltd., 53 CLLC ¶17,049; National Showcase Co. Ltd., 61 CLLC ¶16,185; Heist Industrial Services Ltd., 63 CLLC ¶16,263; Wallace Barnes Co. Ltd. 61 CLLC ¶16,198; Coltingwood Shipyards, OLRB M.R. July, 1967, p. 376; Sunnybrook Food Market (Keele) Ltd., OLRB M.R. Mar. 1972, p. 210. And with regard to the discretionary nature of the word "may" he cited section 30 of The Interpretation Act, R.S.O. 1970, c. 225; Smith v. Rhuland Ltd., 53 CLLC ¶15,057; Regina v. Ontario Labour Relations Board ex parte T.R.W. Electric Components Ltd. (1970) 9 D.L.R. (3d) 669.).

Applying these principles to the complaints before the Board, he submitted that they were really based upon an alleged breach of the collective agreement and yet no grievance has been filed with the request that it be taken to arbitration. Moreover, Mr. Sack stated that the union was prepared to pay the full costs of counsel for all of these "grievors" should they pursue this alternative. In fact, the union was prepared to accept a sole arbitrator mutually agreed upon by the three parties - the grievors, the union and the company. Thus, he submitted, arbitration was available to these complainants and the Board, as is its custom, ought to defer to that process and dismiss the complaints.

16. Mr. Sack's third and final preliminary point was based upon the characterization of these complaints as internal trade union matters. This being so, trade union members are obligated, as a matter of contract, to exhaust the internal trade union remedies available to them - remedies found within the constitution of the trade union - before resorting to the Board or to the courts. (Canadian Textile and Chemical Union, OLRB M.R. Aug. 1971, p. 469; U.A.W. Local 1408 and General Impact Extrusions (Mfg.) Ltd., OLRB M.R. Aug. 1972, p. 798; McMillan v. Yeandle, [1972] 1 O.R. 146; Howard v. Parrinton, [1971] 3 O.R. 659) The complainants have alleged a violation of the constitution or by-laws of the union and thus resort should be had to the General President under Article III, Section 24 of the trade union's constitution or to the Executive Board under Article X, Section 41 of the constitution. Moreover, he submitted that Article E imposed a duty upon trade unions to secure fair working conditions which, again, could be the basis for preferring charges under Article H of the trade union's constitution. Finally, Mr. Sack suggested that because the circumstances surrounding these complaints involve the delicate task of a trade union in trading off and balancing conflicting internal interests, the Board should be reluctant to make its own inquiry before all of the internal procedures available to the complainants have been exhausted.

17. Mr. Koskie objected to any preliminary issues being raised at this time in that the replies of the respondents failed to give him notice of them. However, some time before the hearing (apparently in April), Mr. Sack had indicated to the complainants that arbitration was still available and at that time Mr. Sack appears to have told Mr. Koskie that if any other such preliminary matters occurred to him he would not feel precluded from raising them. The Board notes that Mr. Koskie did not pursue his objection very strenuously, nor did he request an adjournment in order to prepare a response. The Board's practice is to be quite lenient with regard to the pleading of argument and issues (See McCord Corp., OLRB M.R. June 1965, p. 203). Furthermore, the courts have directed the Board to construe liberally the substantive and remedial bases to the matters before it (see Genaire Ltd. and Int'l Assoc. of Machinists, 58 CLLC ¶15,388 (O.H.C.)). Mr. Koskie could have

requested an adjournment had he been surprised but no such request was made. Accordingly, his objection to the appropriateness of the preliminary issues raised by Mr. Sack and Mr. Storie is denied.

18. Mr. Koskie not only refrained from asking for an adjournment but he went on to reply extensively to these three preliminary issues in a manner that was the antithesis of surprise. Responding first to the claims that neither individuals nor employers could be parties to a section 60 complaint, counsel to the complainants argued that the individuals were made parties because they were intimately involved in acts leading up to the complaints. Therefore, by virtue of the allegations made against them and in accord with the Board's general power under section 54 of its rules to add parties, these individuals were properly parties to the complaint. Moreover, it was argued that section 79(1)(c) and section 79(4)(c) specifically referred to "person or persons" reflecting a legislative intention that the Board's relief in this area be broad, meaningful and effective. It was said to be both logical and necessary that the complainant have relief against those responsible for the improper conduct - people who were not clearly agents of the trade union and so not clearly bound by relief made against that entity (this was a reference to Trade Committee officers). It was Mr. Koskie's opinion that nowhere in section 79(4)(c) could be found wording that limited the Board's remedial repertoire to the trade union and thus, if the Board were to create such a limitation, it would be both raising an improper impediment to its jurisdiction (C.S.A.O. National Inc. v. Oakville Trafalgar Memorial Hospital, 72 CLLC ¶14,118; Brayshaws Steel Ltd. and U.S.W., 71 CLLC ¶14,084 (O.C.A.) and failing to recognize the liberal interpretation required of remedial legislation (White Lunch Ltd., [1966] S.C.R. 282, 66 CLLC ¶14,110).

19. In response to Mr. Storie's objection, Mr. Koskie submitted that none of the Board's decisions has yet specifically held that a company cannot be made a party to the complaint and in the Gebbie and Ford Motor Co. Case (supra), the decision most extensively considering the issue, the reasoning of the Board could be construed as being in favour of joining the employer under section 79(4)(c) to accord with the rationale of the admonitions of the United States Supreme Court in Humphrey v. Moore ((1963) 375 U.S. 335 at pp. 356,357) and Vaca v. Sipes ((1967) 386 U.S. 171 at p. 186).

20. Mr. Koskie's position on the second preliminary issue - the availability of arbitration - was manifold. First, he argued that Mr. Sack's offer of arbitration depended on the company making an identical offer and no such offer has been made. More importantly, the relief available in arbitration was likely to be inadequate in that an arbitrator could neither void the by-laws of a trade union nor order that they be complied with and the possibility of an arbitrator ordering relief against both the company and the union was, at best, problematic. Secondly, the trade union and the company were proposing to "clarify"

the agreement during the present bargaining session which would only mean that the complainants would have to return to the Board to contest the validity of such formalized actions. Mr. Koskie was of the opinion that the complaints were broad enough to resolve the entire issue once and for all. Thirdly, despite the existence of the word "may" in section 79, because that section deals with rights possessed by employees under the Act, it must be read as imposing a duty upon the Board to act (Labour Relations Board of Saskatchewan v F.W. Woolworth, [1956] S.C.R. 82 at pp. 86-88). Furthermore, it was submitted that for the Board to defer to arbitration without specific language in the legislation requiring this would be to create an improper impediment to the Board's jurisdiction (Genaire Ltd. and Int'l Ass'n of Machinists, 58 CLLC ¶15,388 at p. 878; Brayshaws Steel Ltd. (supra) at pp. 555-6; C.S.A.O. National Inc. (supra)). Fourthly, Mr. Koskie argued that the basis to the complaint was a violation of section 60, not a violation of the collective agreement and, in any event, that even the courts have recognized a need to assume or exercise an undoubted jurisdiction if deferring to an alternative forum would render legal rights illusory because of the delay involved (IBEW Local 2085 v. Winnipeg Builders Exchange et al, 67 CLLC ¶14,053). Fifthly, he argued that the Board never defers to grievance arbitration where there is an allegation of collusion between the employer and trade union (Boivin v. United Ass'n of Journeymen et al, 67 CLLC ¶16,004; Pitt Street Hotel Ltd., 63 CLLC ¶16,275) or where the relief in that forum is inadequate (Hayes Dana Ltd., OLRB M.R. April 1968 p. 89). Both of these conditions are present in this case, he contended. It was further argued that in this case the complainants were asking the Board to maintain the collective agreement - a request that courts have contrasted with a request for direct enforcement (Ferguson and Fitzsimmons v. Toronto Board of Education, 73 CLLC ¶14,153). Could not this Board make a similar distinction, he asked. Finally, it was argued that to defer to arbitration where a violation of the legislation is alleged is tantamount to recognizing an ability in parties to contract out of the legislation and the Board has held this to be an impossibility (Pigott Construction Co. Ltd. v. N. Zacota, OLRB M.R. June 1969, p. 399).

21. Responding to Mr. Sack's third and final preliminary point. Mr. Koskie contended that the Canadian Textile and Chemical Union case (supra) shows that the Board is not prepared to accept a contract theory as affecting its jurisdiction given the presence of a prima facie violation of public policy. He argued that a violation of section 60 is such a violation of public policy. Moreover, there was nothing in the trade union's constitution that expressly imposed an obligation upon the complainants to exhaust internal remedies before coming to the Board. The courts have required contractual specificity when applying an exhaustion principle (Bimson v. Johnston (1957) 10 D.L.R. (2d) p. 11, 12 D.L.R. (2d) p. 379; Astgen v. Smith, 69 CLLC ¶14,118

and 69 CLLC ¶14,198) and if the Board is to utilize such a doctrine, it too should impose such a requirement. Finally, Mr. Koskie argued that any relief under the trade union's constitution was inadequate and that the Board was a preferable forum because of convenience and expense (Nackrofsky Steel Erecting Ltd. v. Doyle [1973] 3 O.R. 515).

22. We intend to respond to these issues in order, but at the outset, the Board wishes to thank counsel for their thorough assistance. First, the Board is not prepared to dismiss the complaints against either the Company or the individuals, save for Charles Hill. While the Board acknowledges the purposive nature of Mr. Sack's argument concerning the meaning of section 79(4)(c), his analysis does not leave the Board without substantial doubts. For instance, the legislative draftsman made no attempt in either section 79(1)(c) or section 79(4)(c) to restrict the relief available to a complainant to any one individual or entity in an unequivocal fashion. Moreover, the word "employee" appears in that part of the sentence of section 79(4)(c) stipulating against whom relief can be issued, whereas sections 60, 71(2)(b), 119(1), 119(2), 120, 121 and 122 are directed against trade unions, employers, employer organizations and persons. In other words, the occurrence of the word "employee" without any clear reference to a correlative substantive provision tends to support the notion that the legislative draftsman was using a "shot-gun" approach under section 79 to insure the existence of broad remedial relief for complainants. Further support for this interpretation is derived from the phrase "notwithstanding the provisions of any collective agreement" found in section 79(4)(c). If the Board, in exercising its remedial powers, is to override specific provisions of collective agreements, other parties to such agreements, not specifically mentioned in the substantive provisions in question, will be affected. And surely the legislative draftsmen intended that they be parties to proceedings before the Board - proceedings that could detrimentally affect their interests.

Finally, Mr. Sack's reference to the use of definite articles in section 79(4)(c) in contrast to section 81 and section 123 and the implication to be drawn therefrom does not find complete favour with the Board. The word "any" in sections 81 and 123 may well be explained in light of the contexts in which those sections operate. Those sections regulate areas of labour relations where it is obvious that any number of people or entities may be affected by or involved in jurisdictional disputes or unlawful strikes. As a consequence, the word "any" was the appropriate article to specify this breadth of relief; whereas section 79(4)(c) deals with sections 60, 71(2)(b), 119(1), 119(2), 120, 121 and 122 - less pervasive sections for which the definite article "the" is sufficient to designate who may be subject to the Board's direction. For instance, under section 60, an employee will only have one employer who he may want joined for the purposes of

relief under section 79(4)(c) and therefore the phrase "any employer" is clearly unnecessary - the phrase "the employer" is a sufficient reference to his employer. Moreover, a more general but similar argument can be made for the references to other entities or individuals. In short, it can be argued that section 79 is dealing with a less pervasive context than sections similar to 81 or 123 and, as a consequence, the use of a definite article was thought to be appropriate.

For all of these reasons, both Mr. Sack's and Mr. Storie's contentions are not free of considerable doubt. The Board accepts that section 60 is directed at a trade union or council of trade unions but for remedial purposes section 79 is not so unequivocally restricted. And the decisions of the Board in O'Keefe (supra), O'Donnell (supra) and Percy Woods (supra) do not outline any extensive rationale to the contrary. But Donald G. Gebbie and J. Michael Longmoore v. United Automobile, Aerospace and Agricultural Implement Workers of America Local 200; Ford Motor Company of Canada, Ltd. (OLRB M.R. Oct. 1973, p. 519) does suggest a contrary thesis to that proposed by Mr. Sack and Mr. Storie; and in light of the admonitions found in section 10 of the Interpretation Act, R.S.O. 1970, c. 225 and Bakery and Confectionery Workers International Union of America, Local 468 et al. v. White Lunch Limited et al. (66 CLLC ¶14,110 at p. 347) it is a thesis that the Board prefers.

23. Without deciding the issue of whether an employer could be joined to a complaint based upon a section 60 application under section 79(4)(c), the Board in Gebbie had this to say:

49. In view of the disposition of this case it is not necessary for us to finally decide the issue. However, because of the preliminary argument and discussion that ensued during the course of the proceedings, we feel that some comments are necessary. We recognize that section 60 imposes no statutory duty on an employer, but, we also recognize as we indicated in our interim decision that section 79(4)(c) gives this Board broad remedial powers including the vacating of the provisions of a collective agreement. If the Board is to utilize the remedy of remitting matters to arbitration it will undoubtedly be faced with the criticism that an employer whose rights may be affected is not a party to the proceedings; this is particularly so should the Board require time limits in a collective agreement to yield which may be permissible under section 79(4)(c). In order to avoid a denial of natural justice in these circumstances an employer should be a party to the proceedings and the Board's Rules of Procedure, i.e.,

Rules 28 and 54, may be used to give an employer notice and the opportunity to appear in those proceedings where his rights may be affected.

50. The real issue is whether the enforcement provisions of the Act contained in section 79(4)(c) should be made to run against an employer in the absence of any statutory violation by that employer. We recognize that in many situations appropriate relief cannot be afforded to an employee unless the relief can run to an employer. Section 79(4)(c) if read literally suggests that there may be relief against both the union and the employer where there is a breach of section 60.

51. Counsel for Ford took the position that the reference to section 60 was inserted in section 79(4)(c) in order to enable the Board to grant a remedy against a union for breach of section 60, but it did not contemplate that a remedy would also be awarded against an employer. That is the issue that remains to be decided. We point out that in Vaca v. Sipes the Court had the opportunity to discuss the relationship of an employer to the situation where the union had violated its statutory duty. In Vaca v. Sipes the Court stated at p. 18,302:

"Though the union has violated a statutory duty in failing to press the grievance, it is the employer's unrelated breach of contract which triggered the controversy and which caused this portion of the employee's damages. The employee should have no difficulty recovering these damages from the employer, who cannot, as we have explained, hide behind the union's wrongful failure to act; in fact, the employer may be (and probably should be) joined as a defendant in the fair representation suit,..."

(italics added)

The conclusion in Vaca v. Sipes was that the remedy should run to the employer notwithstanding that it was the union that had violated its statutory duty.

52. Since we did not call on the respondent employer and the respondent union for final argument in this case, we do not think it appropriate to finally decide the issues raised. We do wish, however,

to record the raising of the argument and our concern with respect to the operation of section 60 and section 79(4)(c), and to leave the matter in abeyance for argument and final decision at another time.

In other words, the references to section 60 in section 79 have to be viewed in relation to the legislation history of section 60. A trade union's duty of fair representation originated with the courts of the United States (see Steele v. Louisville & Nashville Railroad Co. et al (1944) 323 U.S. 192; Ford Motor v. Huffman et al (1953) 345 U.S. 330; Humphrey et al v. Moore et al (1964) 375 U.S. 335; Vaca et al v. Sipes, Administrator (1967) 386 U.S. 171) and only later was the duty adopted by the National Labour Relations Board by way of adjudication (Miranda Fuel Co. NLRB 1962, 51 LRRM 1584) and by the Ontario Labour Relations Board by way of legislation (An Act to amend The Labour Relations Act S.O. 1970, c. 85, ss. 23 and 28). In this context the excerpt from Vaca and Sipes (supra) reproduced in Gebbie (supra) and a similar sentiment expressed by Mr. Justice Goldberg in Humphrey v. Moore (supra at p. 356-357) become very important in placing a meaning upon the variety of wording found in section 79(4)(c). The legislative draftsmen was working with this background to the duty of fair representation and for this reason the Board prefers to give sections 79(1)(c) and 79(4)(c) a wide and liberal interpretation in order to insure that the Board's remedial powers remain meaningful and effective. Moreover, this reasoning, while based upon Vaca v. Sipes (supra) carries significance for persons and employees as well as employers. If a complaint makes out a prima facie justification for the joining of such individuals in order that the Board provide an effective remedy for the violation of a section 60 right, the Board will join such individuals.

24. In this regard Mr. Koskie contends that it is necessary that the employer is joined because it has allegedly participated in a scheme to defeat the complainants' seniority rights and this allegation applies to the named individuals as well. He argued that because of the ambiguous status of the Trades Committee he is unsure that the alleged mala fides involvement of its officers can be effectively remedied by an order against the trade union. However, the Board notes that Charles Hill is President of the trade union and is not a member of the Trades Committee and Mr. Koskie did not submit any reason for naming him personally in the complaint. It would appear that an order or remedy directed against the trade union and its officers and agents would effectively issue against Mr. Hill in his official capacity and, accordingly, the complainants against him personally are dismissed. But a prima facie justification for the addition of the employer and other individuals to the complaints as parties has been made out. Accordingly, based upon the above reasoning, Mr. Sack's request for a dismissal of the complaints against the other individuals is denied, as is Mr. Storie's request in relation to the employer.

25. In the alternative, the Board rules that it was proper to join the individuals and employer based upon the allegations of conspiracy to defeat rights of the complainants under the Act. Surely if an individual or employer assists or causes a trade union to act contrary to the requirements of section 60, that individual or employer is a proper party to the proceedings based upon that section under section 79. In this regard, the National Labor Relations Board has held that an employer and a trade union will be jointly and severably liable where both have discriminated against an individual and the fact that the employer yielded to union pressure does not appear to be a defense. (Imparato Stevedoring Company and International Brotherhood of Longshoremen, 113 NLRB 883; H. Milton Newman et al and Local 456, Teamsters, 85 NLRB 725). Surely the wording found in section 58, 61 and 79 is broad enough to embrace such a theory of liability.

For instance, section 3 of the Act provides that "[e]very person is free to join a trade union of his own choice and to participate in its lawful activities." One lawful activity must be the enjoyment of rights derived under a collective agreement as these rights are administered by the trade union bargaining agent subject to the requirements of section 60. (For a somewhat similar use of section 3 in relation to the right to strike see: Regina v. Canadian Pacific Railway Co. (1961), 31 D.L.R. (2d) 209 at p. 218 and C.P.R. Co. v. Lambri (1962), 34 D.L.R. (2d) 654 at p.664). Section 60 provides that the trade union must "not act in a manner that is arbitrary, discriminatory or in bad faith" in regard to such people. It is therefore possible to say that a person has a right to participate in these lawful activities of a trade union (ie) enjoying the rights derived from a collective agreement, without being dealt with in an arbitrary, discriminatory or bad faith manner, and accordingly, if an employer assists a trade union in violating its duty under section 60 it can be argued that the employer may be in violation of any or all of the subsections of section 58. Similarly, where individuals cause or assist a trade union to violate its duty under section 60 it can be argued that section 61 has been violated in that the actions of those individuals have coerced someone "to refrain from exercising any other rights" under the Act. Moreover, it could be argued that the same actions have coerced the trade union "to refrain from performing any obligations under the Act." And, a remedy for both of these alleged violations could be sought under sections 79(1)(a) and 79(4)(a).

26. Finally, in regard to this first preliminary point but not unrelated to Mr. Sack's second preliminary issue, it is noted that the company, the union and all of the individuals named as respondents are bound by the terms of the collective agreement as a matter of statute by section 42 of The Labour Relations Act which reads:

42. A collective agreement is, subject to and for the purposes of this Act, binding upon the employer and upon the trade union that is a party to the agreement whether or not the trade union is certified and upon the employees in the bargaining unit defined in the agreement.

However, this provision is subject to section 44(5) which recognizes that after the commencement of a collective agreement the parties to it may mutually revise any of its terms other than a provision relating to its term of operation. The crux of the complainant's claims is that the company has deviated from the seniority requirements of the collective agreement under pressure from the trades committee and that the union has, at the very least, passively acquiesced in this deviation. None of the parties to these complaints contended that there had been a valid amendment or change to the collective agreement. Accordingly, if the deviation from the terms of the collective agreement can be substantiated it could be argued that the company, the individuals and even the trade union are in violation of section 42 of the Act - hence another another substantive section is available to the complainants, thereby substantively grounding a request for relief under sections 79(1)(a) and 79(4)(a). (see Boivin v. United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 67, 67 CLLC para. 16,004 at 960). Furthermore, the fact that the complainants failed to "plead" these sections or any of the others mentioned in the preceding paragraph is not determinative. In this regard the courts have admonished the Board to "exercise any jurisdiction given to it under the Act, notwithstanding that a particular section of the Act is referred to in the formal application." (See Genaire Ltd., and International Association of Machinists and the Ontario Labour Relations Board, 58 CLLC ¶ 14,388 at p. 876).

But this latter possibility runs into Mr. Sack's second preliminary issue - that where a violation of the collective agreement is alleged the Board should defer to the grievance arbitration process. While the Board wishes to go on record as saying it is not obligated to defer to that process in that a breach of the Act or an alleged breach of the Act is a matter within the jurisdiction of the Board - the agency charged with the responsibility of administering the legislation - the Board has chosen to exercise its discretion under section 79 by deferring to grievance arbitration in appropriate circumstances. These circumstances generally involve the allegation of an unfair labour practice that constitutes, at the same time, an alleged breach of a collective agreement. Because the legislation has imposed grievance arbitration upon the parties to a collective agreement where differences arise between them relating "to the interpretation, application or administration" of the agreement, the Board has wisely decided to refrain from intervening under section 42 or under any of the other more prohibitory sections of the Act. (see Canadian Acme Screw (supra);

John Inglis Ltd. (supra); National Showcase Ltd. (supra); Wallace Barnes Ltd. (supra); Industrial Foods Ltd. (supra); Collingwood Shipyards Ltd. (supra); Sunnybrook Food Market (Keele) Ltd. (supra).) Any other course might undermine the important values of the grievance arbitration process - a possibility the legislature clearly intended to avoid.

But in deferring to arbitration, the Board has always assumed that arbitration would effectively resolve both the unfair labour practice alleged and the violation of the collective agreement.

27. For instance, in National Showcase Co. Ltd., 61 CLLC ¶16,185 a complaint which was made under section 57 (now section 79) of the Act, might properly have been the subject of a grievance pursuant to the provisions of a collective agreement between the parties. The Board there stated:

It seems to us, therefore, in determining whether we should exercise our discretion under section 57, subsection 4, it is proper to take into account the fact that an alternate remedy is one which the parties themselves have agreed to, and, further, involves a procedure under which the parties agree to attempt to settle the dispute themselves before bringing in an outsider, that is, an arbitrator, we have no hesitation in saying that we ought not to proceed further under section 57, subsection 4.

While in the special circumstances of a particular case we might well be persuaded to take the contrary view, in all the circumstances of this case we can find no reason to depart from the general principle enunciated above.

In the Pitt Street Hotel Ltd. case, 63 CLLC ¶16,275, a complaint pursuant to section 65 (now section 79) of the Act, the complainant alleged that he had been discharged by his employer because of union activity. The employer was a party to a collective agreement with a trade union, and the complainant had invoked the grievance procedure. A meeting was held between the employer and the trade union, and following the meeting the union decided not to proceed to arbitration of the grievance. The complainant then made the complaint to the Board pursuant to section 65 (now section 79). The decision of the Board read, in part, as follows:

When an alternative remedy exists under a collective agreement which is available to

the complainant, the Board is of the opinion that it should not inquire into an alleged complaint arising out of a violation of some provision of the Act. Notwithstanding this, however, there are exceptional circumstances in which the Board, in the exercise of its discretion under section 65, subsection 4, will inquire into a complaint. One of these circumstances is when there is an allegation of collusion.

In the result, the Board did not make any finding that there was collusion between the employer and the officials of the trade union and the complaint was dismissed.

In the Wallace Barnes Company Ltd. case, 61 COLC ¶16,198, an application was made to the Board pursuant to section 68(2) (now section 95(2) of the Act) for a declaration that the applicant was an employee of the respondent company. The applicant, who had been discharged by the respondent, alleged that she had been wrongfully discharged in violation of the collective agreement, and that having therefore been dismissed, as she alleged, contrary to The Labour Relations Act, she remained an employee for the purposes of the Act. The application was made after the trade union had determined not to proceed with her grievance. The Board found that the applicant had no remedy under that section of the Act but went on to buttress its decision by noting the role of the trade union in administering the collective agreement, in the following terms:

The trade union is also their bargaining agent with respect to the administration of the collective agreement and when disputes arise involving the interpretation or alleged violation of the agreement, these are matters for the parties to that agreement, that is, the trade union and the employer.

We would note that the administration of the collective agreement is as delicate a task for a trade union as is the negotiation of it, thereby justifying this general stance of the Board. But of course the Board has always recognized that the Wallace Barnes analysis is not applicable where the trade union has, by collusion or by other wrongful means, procured the discharge of an employee. This is illustrated by the Boivin case (supra) where the trade union took the position, contrary to its constitution, that the complainant was not a member of it, and, therefore, relying on a union security provision in the collective agreement with the employer, procured his dismissal. In deciding not to direct the complainant to seek relief under the collective agreement the Board had this to say:

8. In the instant case, there is a collective agreement in effect, and it would appear that an alternate remedy exists under the grievance and arbitration provisions of that agreement. It is not alleged that there has been collusion between the employer, who is not a party to this proceeding, and the trade union. The allegation is rather that the union itself wrongly procured the discharge of the complainant. Where the trade union has itself procured the discharge of an employee, it would be unreasonable (to say the least) to expect it then to carry that case through the arbitration process on the employee's behalf. Further, in these circumstances, it would be unfair to regard the employer as alone liable to the employee for his wrongful discharge. In any event, it was conceded by the representative of the respondents that the complainant had no effective recourse, apart from that now sought, for the wrong done him. It is clear that the circumstances of this case come within the class of "exceptional circumstances" to which the Board referred in the Pitt Street Hotel Ltd. case, and which were contemplated in the National Showcase Co. Ltd. case, and also perhaps in the Heist Industrial Services case, *infra*. The instant case follows the policy expressed by the Board in its previous decisions.

In other words, it made little sense to defer to arbitration to interpret the collective agreement and reinstate the complainant when that process was not available to the grievor.

28. But the process must be clearly unavailable or unsuitable to resolving the issue before the Board will refrain from deferring to it. This position is reflected in Collingwood Shipyards (*supra*) where it was alleged that the respondent company had discharged the applicants contrary to section 59(a) (now section 58(a)) of the Act because they were members of a trade union - the trade union (the C.N.T.U.) being a rival to the trade union (the U.S.W.) that was party to the collective agreement with the company, covering the complainants. The company asked the Board not to entertain the complaints in that the relief sought should be adjudicated by a board of arbitration constituted pursuant to the collective agreement between the company and Local 6320 of the United Steelworkers of America. In fact, grievances under the agreement had been launched by the complainants and a board of arbitration had been constituted. Therefore, despite the fact that the CNTU had been engaged in an organizing campaign designed

to replace the United Steelworkers of America, Local 6320, and despite the fact that Local 6320 had taken punitive action against the complainants by effecting their removal as stewards of Local 6320 because of their membership in and support of the CNTU, the Board decided to at least await the outcome of the arbitration proceedings. The following paragraphs outline the rationale underlying its reasoning:

11. There has been no allegation that the United Steelworkers of America have engaged in collusion or connivance with the respondent with respect to the actions taken by the respondent. It must be remembered that the individual grievors each signed a grievance which resulted in the arbitration proceedings which are pending. The aggrieved persons continue to be represented by the United Steelworkers of America which is a party to a collective agreement with the respondent, which provides in part that should "differences or disputes arise between the company or any official of the company and any employee or group of employees regarding the interpretation or application of this agreement or for any other cause", such differences or disputes should be settled by the grievance or arbitration procedures provided in the collective agreement. The parties to the collective agreement are currently processing the dispute with respect to the aggrieved persons in accordance with the provisions of the collective agreement. This procedure is not only authorized by the collective agreement but is in accordance with the expressed intent of The Labour Relations Act under which the United Steelworkers of America is recognized as the sole and exclusive bargaining agent of the persons covered by the collective agreement.

12. The fact that CNTU is not a party to the arbitration proceedings is not a matter with which this Board can be concerned. As stated in Re Hoogendoorn v. Greening Metal Products and Screening Company et al 1967 1 O.R. 712 at 728, "An award given in pursuance of arbitration provisions of a collective agreement is not open to attack merely because interests adverse to the grieving union, other than the employer, were not represented."

13. We recognize that, in view of the allegations made by the complainant on behalf of the aggrieved persons, the United Steelworkers of America my

find themselves in a most unenviable position in the arbitration proceedings. The United Steelworkers of America may be subject to the accusation that they did not lend their full support to the aggrieved persons in the arbitration proceedings unless the result is completely favourable to the grievors. Although invited to do so, this Board is not prepared to assume that the United Steelworkers of America will fail to fairly promote the interests of the aggrieved persons in the arbitration proceedings. This Board is also not prepared to assume that the arbitration board will not make its award in accordance with the principles of natural justice. The Labour Relations Board is not empowered to sit in appeal on the arbitration board nor is it fitting that it should in any way impugn the composition of the arbitration Board or any decision of the arbitration board. It would be even more reprehensible for this Board to do so prior to the arbitration board hearing the matter and arriving at its decision.

14. If the United Steelworkers of America does not press the arbitration proceedings to a conclusion, or if it can be established that there has been a breach of duty of good faith representation by the United Steelworkers of America in the arbitration proceedings, or if the arbitration board finds on the evidence that it is without jurisdiction to deal with the matter, as the complainant suggest may happen then in such circumstance, this Board may (although we have not so decided) entertain this complaint pursuant to the provisions of section 65 of the Act. However, until such time as the above events or events of a similar nature have taken place the complaint by the complainant is untimely and cannot be entertained.

15. As stated in the General Bakeries Limited Case, O.L.R.B. Monthly Report, February 1967, p. 919, "the fact that something may or may not happen in the future is not a reason in our view" for entertaining a complaint under section 65 of the Act which has been referred to arbitration.

16. For the above reasons, this complaint is accordingly dismissed.

Similarly, the Sunnybrook Food Market (Keele) Ltd. (supra), three

persons alleged that they were discharged because they supported an attempt of a trade union to organize the rest of the employees of the company. At the time of this attempt the company's employees were covered by a collective agreement between Local 206, National Council of Canadian Labour and the company, and no attempt had been made to resolve the dispute pursuant to the provisions of that agreement. In relying upon Collingwood Shipyards, and finding that the application was premature, the Board stated:

2. For the reasons given by the Board in the Collingwood Shipyards, Division of Canadian Shipbuilding & Engineering Limited Case, OLRB Monthly Report, July 1967, p. 376, the Board finds that this application is premature.

3. If, however, the aggrieved persons attempt to file grievances under the collective agreement above referred to and Local 206 refuses to process their grievances or if it can be established that there has been a breach of duty of good faith representation by Local 206 or if it can be established that Local 206 and the respondent have engaged in collusion or connivance with respect to the actions taken by the respondent, this Board may (although we have not so decided) entertain this complaint pursuant to the provisions of section 79 of the Act. However, until such time as the above events or events of a similar nature have taken place, the complaint by the complainant in this matter is premature and cannot be entertained.

4. This complaint is therefore dismissed.

29. Where there is no allegation of collusion, it should be noted that the National Labour Relations Board has followed quite a similar path. While the arbitration remedy cannot oust the Board's jurisdiction, (NLRB v. Wagner Iron Works, C.A. 7, 1955, 35 LRRM 2588 den'd U.S. Sup. Ct. 1956, 37 LRRM 2639; petition to vacate denied defer to arbitration in cases involving the allegedly unlawful unilateral action of an employer provided the following conditions outlined in Joseph Schlitz Brewing Co. (1969) 175 NLRB 141 at p. 142) are met. (see also Collyer Insulated Wire (1971) 77 LRRM 1931 and Note, New Developments in the NLRB Deference to Arbitration [1972] Wash. U.L.Q. 555).

Thus, we believe that where, as here, the contract clearly provides for grievance and arbitration machinery, where the unrelated action taken is not designed to undermine the union and not patently erroneous but, rather, is a substantial

claim of contractual privilege, and it appears that the arbitral interpretation of the contract will resolve both the unfair labor practice issue and the contract interpretation issue in a manner compatible with the purposes of the Act, then the Board should defer to the arbitration clause conceived by the parties.

However, when the interests of the charging parties are in apparent conflict with the interests of the union and certain of its officials, the Board has held that it would not be consonant with statutory policy to defer to arbitration (see Kansas Meat Packers (1972), 80 LRRM 1743). And at first glance, the Kansas Meat Packers case appears to conflict with this Board's approach in Collingwood Shipyards and Sunnybrook Food Market cases. But in these latter cases there were no allegations of collusion between the employer and trade union and the Board was unprepared to assume that the employees would not be fairly represented by the trade union either in the grievance process or at the arbitration hearing.

30. However the Kansas Meat Packers position remains important because now all of these Ontario cases must be interwoven with the requirements of section 60 of the Act. For instance, where an employee is discharged by the employer and where it is first established that the trade union is in breach of its duty of fair representation by, arbitrarily failing to take the grievance to arbitration the Board may assume jurisdiction to interpret a collective agreement in order to fashion meaningful relief for the employee. (see Joseph Pap and I.U.E., Local 523, and RCA Ltd. [1974] Canadian LRBR 74.) As noted above, this will often necessitate joining the employer who has initiated the sequence of events giving rise to the breach of the union's duty of fair representation. But, it was noted in Gebbie (supra) that part of the remedy may be the remission of the grievance to an arbitrator under the collective agreement which raises the dilemma faced by this Board - when should the Board defer to arbitration in a section 60 situation. In many situations, in finding that the trade union has violated section 60 in failing to take an employee's grievance to arbitration, facts will arise that suggest the trade union is unlikely to represent the employee fairly at the arbitration hearing and in such a situation the Board may decide to hear the matter itself as was done in the Gebbie case and as the National Labor Relations Board appears to do.

31. The facts of this case raise a similar problem - but a problem that arises before the Board can determine whether a violation of section 60 has occurred. The trade union has not refused the applicants access to grievance arbitration but the trade union completely disagrees with their interpretation of the collective agreement. Therefore, if it were not for the trade union's particular arbitration proposal, the Board would have difficulty in believing that the employees would be adequately

represented at an arbitration hearing. But to insure the integrity of that process the trade union has offered to pay for the services of counsel to the applicants should they avail themselves of arbitration under the collective agreement and have regard both to waive the requirements of a tripartite board of arbitration and to permit the complainants to share in the selection of a sole arbitrator with the company and the trade union. And while Mr. Storie did not agree to this latter proposal at the hearing, he looked favourably upon it and assured the Board that he would consult with his client and (we assume) recommend the proposal to it.

32. The issue then facing the Board is clearly apparent. The crux or essence of the complaints before the Board first requires that a deviation from the terms of the collective agreement be established. Once established the complainants will have to go on and prove that the occurrence of this deviation, in itself or because of requirements in the by-laws of the trade union, places the trade union in violation of section 60. If either or both of these findings are made, the Board will then have to fashion a remedy under section 79. And what might this remedy look like? While the complainants have asked for damages, their main claim appears to be an order directing all of the respondents to refrain from improperly affecting their contractual rights. Even though an arbitrator has no jurisdiction under section 60, would not his declaration as to the meaning of the collective agreement, should it favour the complaints, be tantamount to the same relief? Of course the trade union and the company could then formally amend the collective agreement to accord with the tradesmens' wishes. But this would first place the issue before a general membership meeting which is apparently one of the primary objectives of the applicants.

Should the arbitrator find that there has been no deviation from the meaning of the collective agreement, that would effectively dispose of the main basis to the applicants' complaints. And while the applicants might want to come back to the Board to argue that this kind of contractual arrangement, in and of itself, is a violation of section 60, that issue and that issue alone would be then clearly before the Board - and not, an alleged breach of a collective agreement as now is the case.

33. What the Board fears if it should initially assume jurisdiction to interpret the collective agreement as the first step in determining whether a violation of section 60 has occurred, notwithstanding the absence of an attempt to exhaust the grievance procedure is that each time an employee or group of employees feels aggrieved about the stance of a trade union on the interpretation of a provision of an agreement they will come directly to the Board without attempting to have the matter resolved in the most appropriate forum. It is a simple matter

to accompany such a request with the allegation of collusion and yet if the Board were to entertain such applications it might undermine the efficacy of the grievance process - a process upon which the health of collective bargaining depends. Paragraphs 4, 15 and 47 of the Gebbie case outline the difficulties involved in applying the duty to the grievance process but it is fundamental to collective bargaining as we know it, that the parties clearly exhaust the usefulness of the grievance process before approaching the Board. Everyone in the bargaining unit cannot always be satisfied by a particular interpretation of the collective agreement. And we believe the grievance process, culminating in arbitration, is best suited to resolve the vast majority of these differences and to ascertain the meaning of collective agreement.

34. Of course, where it is obvious that a grievance arbitrator cannot provide effective relief or where it is obvious that the interests of the applicant(s) will not be effectively represented at the arbitration hearing because of the tripartite nature of the hearing and a direct conflict between interests of the trade union and the applicants, the Board should not require recourse to this forum. For the reasons outlined above, this does not appear so obvious in the facts at hand. However, had the trade union not made the offer it did, or if Mr. Storie is unable to persuade the company to accept a sole arbitrator jointly selected by it, the trade union and the applicants, this Board would have taken, or will take, a very different position. (see Adell, The Duty of Fair Representation - Effective Protection for Industrial Rights? (1972), 25 Ind. Rel. 602 at p. 609).

In other words, we want individuals to exhaust all avenues for redress under the grievance procedure through their exclusive bargaining agent when they are alleging a breach of a collective agreement. In most such circumstances the trade union will either refuse to take the grievance on to arbitration because it is without merit or it will decide to process it through to arbitration. If their grievance is not taken forward and the grievors believe that this decision of the trade union is arbitrary, discriminatory or in bad faith they should then file a complaint with the Board under section 60. Of those grievances that the trade union agrees to take to arbitration only in a very small minority will the interests of the trade union and grievors be in a direct and obvious conflict - although the case before us is such an instance. But in these circumstances, the Board is unlikely to have confidence in the efficacy of grievance arbitration as it normally exists under collective agreements. Tripartite arbitration with the nominees of the trade union and the employer mutually selecting an impartial chairman and then collaborating with him in the resolution of this dispute would not be appropriate. While justice might be done it would not appear to have been done from the complainants' perspective. For them to have confidence and for the Board to have confidence in the arbitration process the

complaints must have a role in the selection of a neutral sole umpire, experienced in interpreting collective agreements, and they must be adequately represented in that forum. Both of the trade unions' offers - the financial assistance and the waiver of a tripartite board of arbitration - create a format in which confidence can be placed. In these circumstances, provided Mr. Storie's client agrees, the Board is prepared to defer or await the outcome of arbitration. We say "await the outcome" because 1) if the dispute over the meaning of the collective agreement is not resolved with reasonable promptness by recourse to arbitration; 2) if the arbitration procedures have not been fair; or 3) if the outcome of arbitration is repugnant to the Act or is remedially inadequate to resolve the applicants' claims under the Act - claims based on a violation of the agreement - we will then hear such complaints in exercise of our jurisdiction. Accordingly, the Board refuses to determine if a breach of a collective agreement occurred but retains jurisdiction over this dispute for these limited purposes set out immediately above. (For a somewhat similar retention of jurisdiction, see Collyer Insulated Wire (1971), 77 LRRM 1931.)

35. Implicit in all of this is that Mr. Koskie's contention that section 79 is a mandatory section and that the Board has no power to defer has been rejected. We do not read The Labour Relations Board of Saskatchewan and F. W. Woolworth Company Ltd. et al [1956] S.C.R. 82 as holding against the exercise of such discretion but that the admitted discretion of the Saskatchewan Board was so improperly exercised in those circumstances as to create a jurisdictional error. Rather, the Board relies Regina v. Ontario Labour Relations Board ex parte T.R.W. Electric Components Ltd. (1969) 9 D.L.R. (3d) 669 (Ont. H.C.) for support in ruling that the word "may" in section 79 clearly denotes a discretionary power in the Board's remedial authority. Moreover, in taking section 37 into account in exercising this discretion - a section upon which the health of collective bargaining depends - the Board finds nothing inconsistent with rulings contained in Shopmen's Local Union No. 743 of the Int'l Ass'n of Bridge, Structural and Ornamental Iron Workers v. Brayshaws Steel Ltd. and United Steelworkers of America [71 CLLC ¶14,084 O.C.A.]

36. Finally, while it is not necessary to deal with Mr. Sack's third and last preliminary point - that the complainant must exhaust the available internal trade union remedies provided for in the trade union's constitution - a number of observations are in order. Once again we would note that the Board is not obligated to defer to such remedies. Even if a complainant before the Board has, as a matter of contract, committed himself to exhaust his constitutional remedies, the Board is not bound by such an obligation. The parties subject to The Labour Relations Act cannot contract out of the legislation nor oust even a part of the Board's jurisdiction (see Pigott Construction Co. Ltd., v Nicholas Zacota, OLRB M.R. June, 1969, p. 399). Such an ability would

be repugnant to the purposes of the legislation. But once again the Board has, as a matter of exercising its discretion under section 79, deferred to such internal trade union processes if it is assured that the machinery available will afford "due process" and "natural justice" to the persons concerned (Canadian Textile and Chemical Union, OLRB M.R. August 1971 p. 469) and that it is not an illusory process (General Impact Extrusions (Mfg.) Ltd. and U.A.W. Local 1408, OLRB M.R. August 1972, p. 798). We would elaborate this latter requirement to embrace the necessity that adequate relief be available to the charging parties and that the speed, economy and convenience of such a forum be somewhat equivalent to that associated with the Board's processes. Moreover, the individuals concerned should have expressly obligated themselves to exhaust these alternative remedies [see Bimson v Johnston (1957) 10 D.L.R. (2d) 11 at p. 35 (Ont. H.C.)]. However, a lack of such specificity will not always be fatal.

37. If we had to apply these principles to the case before us, but without exhaustively reviewing the provisions of the trade union's constitution, we would note: (1) there is no express obligation to exhaust the remedies provided in the document; (2) the employer cannot be joined to any proceedings under this document and hence remedial relief under it may well be inadequate; (3) there is no assurance that the General President will act with the necessary speed once a charge is preferred under section 49; and (4) there is no assurance from the document, nor was any assurance forthcoming from counsel, that the forum is in any way related to the speed and economy obtained by the Board.

DECISION OF BOARD MEMBER J.E.C. ROBINSON, Q.C.: July 3, 1974.

I dissent for reasons to be given later in writing.

5347-73-R: International Union of Operating Engineers, Local 793 (Applicant) v. MERIDIAN BUILDING GROUP LTD. (Respondent).

BEFORE: R. A. Furness, Vice-Chairman and Board Members H. J. F. Ade and E. Boyer.

DECISION OF R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBER H. J. F. ADE: July 4, 1974.

. . .

5. The applicant is seeking certification for its regular craft unit of operating engineers in the Board's regular geographic area #8. The respondent takes the position that it does not have any employees in the bargaining unit sought by the applicant.

6. We have considered the Report of the Examiner dated May 24, 1974, and the representations of the parties thereon.

7. In our view, there are two basic issues in this application. Firstly, what was the nature of the work performed by the employees affected by this application on March 13, 1974, the date of the making of this application? Secondly, if such employees were engaged in operating material hoists and/or man lift hoists, is such equipment properly within the inclusion of the term "similar equipment"?

8. It appears that there are five employees affected by this application: Joseph DiDomenici, Spedito Mascietta, Agino Tata, Joseph Trolio and Salvatore Bondi. There is no evidence before the Board with respect to Spedito Mascietta.

9. The evidence with respect to Salvatore Bondi indicates that he operates a material hoist on occasions and also works with the labourers on the job site. There is no evidence that he worked on a material hoist on March 13, 1974.

10. With respect to the evidence of Agino Tata, we find that he has not operated a hoist for the respondent between March 1, 1974 and April 17, 1974.

11. The evidence with respect to Joseph DiDomenici indicates that he operates a material hoist and also works with the labourers on the job site. There is no evidence that he worked on a material hoist on March 13, 1974.

12. There is no evidence that Joseph Trolio operated a man lift hoist on March 13, 1974.

13. Accordingly, we find that there is no one who would on March 13, 1974, even arguably fall within the bargaining unit for which the applicant is seeking certification. It is therefore unnecessary for us to consider the second issue referred to in paragraph seven herein.

14. We therefore find that, having regard to the provisions of section 6(1) of The Labour Relations Act, there is not an appropriate bargaining unit in the circumstances of this application. This application is therefore dismissed.

15. In conclusion, however, we wish to state that whenever the question of the inclusion or exclusion of operators of a material hoist and/or a man lift hoist is in issue before the Board, we shall require evidence and argument from the parties on their inclusion or exclusion from the applicant's craft bargaining unit and on the meaning to be given to the term "similar equipment".

DECISION OF BOARD MEMBER E. BOYER: July 4, 1974.

Having regard to the Examiner's Report, I would have found that the hoists were in operation on the date of the application and therefore would have certified them as a bargaining unit.

5791-74-R: Teamsters International Union Local 990 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. NORTH SHORE SUPPLY CO. LTD. (Respondent) v. Group of Employees (Objectors).

BEFORE: Frank V. Boscariol, Vice-Chairman, and Board Members H.J.F. Ade and D. B. Archer.

APPEARANCES AT THE HEARING: I. J. Thomson for the applicant; A. M. Gans, J. B. Evans and A. Walz for the respondent.

DECISION OF THE BOARD: July 4, 1974.

. . .

2. This is an application for certification in which the respondent has raised the question of the Board's jurisdiction to deal with the matter.

3. The respondent is a wholly owned subsidiary of Canada Steamship Lines Ltd. and operates out of the port of Thunder Bay as a "Ship Chandler". In this regard it is engaged solely in supplying inland water shipping with provisions (such as produce, meats, vegetables, hardware, ropes etc.) necessary for the day to day functioning of the ships and crews coming into the Thunder Bay area. Approximately 95% of the respondent's business relates to ships many of whose operations extend to various ports in the United States as well as in Montreal. There can be no question that these operations as such fall within the purview of federal jurisdiction under the heading of "Navigation and Shipping" pursuant to Section 91(10) of the B.N.A. Act, 1867. The remaining 5% of the respondent's business is directed towards furnishing the tugs which in turn service the ships coming into the Thunder Bay area.

4. Approximately 75% of all ships coming into the Thunder Bay area, are the exclusive recipients of this service. It is clear that the bulk of the ships serviced are in the fleet of Canada Steamship Lines Ltd. The provisions are exclusively supplied by the respondent from its own warehouse situate in Thunder Bay and orders are filled continuously as needed on a 24 hour per day and 7 day per week basis. In this regard, the respondent's employees perform their duties independently of the authority of the ships'

officers or crew. These employees themselves pick up, deliver and load the goods aboard the ships.

5. It is the submission of counsel for the respondent that the respondent's provisioning operations constitute an integral and necessary adjunct to the federal undertaking of "Navigation and Shipping" and that accordingly the respondent's employees fall within the exclusion jurisdiction of the Dominion Parliament. In support of his position, counsel placed heavy reliance upon The Stevedoring Case sub. nom. Reference Re Validity of Industrial Relations and Disputes Investigation Act (Can.) and Applicability in Respect of Certain Employees of Eastern Canada Stevedoring Co. Ltd. [1955] 3 D.L.R. 721 (S.C.C.), contending that the instant case "falls squarely within the four corners" of that case. Counsel referred also to several other court decisions including Attorney-General for Ontario v. Israel Winner [1954] A.C. 541; Re Colonial Coach Lines Ltd. et al and Ontario Highway Transport Board et al (1967) 62 D.L.R. (2d) 370 (Ont. H.C.) and City of Kelowna v. Labour Relations Board of British Columbia and Canadian Union of Public Employees, Local No. 338 CLLC ¶ 14,207 (B.C.S.C.). Reference was also made to decisions of this Board and in particular to the Robertson-Yates Corporation Ltd. case, OLRB M.R. October, 1962, p. 215 and the Centeast Auto Terminals Ltd. case, [1974] OLRB Rep. 67.

6. In our opinion, the facts as set out in the instant case are clearly distinguishable from those in the decisions cited to us by counsel for the respondent. For example, in The Stevedoring Case (supra), the Supreme Court of Canada was dealing with the operations of a company engaged in the loading and unloading of ships' cargo, wherein the court, in effect, concluded that the stevedoring work in question was an integral part of and necessarily incidental to the federal head of "Navigation and Shipping".

In reaching this conclusion, Locke J., in his decision stated at page 768, as follows:

"it.....appears that the loading and unloading of cargo are part and parcel of the activities essential to the carriage of goods by sea, and that, as in the case of the seamen, legislation for the regulation of the relations between employees and employers is, in pith and in substance, legislation in relation to shipping".

Further, at page 768, he continues:

"the question as to whether the provisions of the Act apply to a class of employees depends

upon whether the services rendered are in relation to a matter as to which Parliament has jurisdiction."

In this regard, we find that the Centeast Auto Terminals Limited case (supra) presents facts more analogous to those contained in the Stevedoring Case and which are clearly distinguishable as such. In that case, the Board determined that the operations of the company in loading and unloading automobiles from C.N.R. trains can be characterized as an integral part of and necessarily incidental to rail transport. That is to say, the interconnecting operations of transcontinental railway transport of which the unloading of automobiles is an integral part, was found to fall outside the competence of this Board.

7. These situations are to be contrasted with the circumstances as depicted in Underwater Gas Developers v. OLRB et al (1960) 24 D.L.R. (2d) 673, where the Ontario Court of Appeal was asked to rule upon the Board's jurisdiction in relation to employees engaged in certain gas well operations. At page 683, the court stated as follows:

"The operations of the appellant Company are not only purely local in nature but they cannot fairly or sensibly be construed as operations of navigation and shipping; there is some "navigation" and some "shipping" in those operations between the shore and the drilling sites but those activities are strictly incidental and subordinate to a totally different activity and undertaking, namely the establishment and servicing of gas well sites; the "dominant" features and objects of the undertaking are features and objects wholly within provincial jurisdiction. It is, in my view, completely unrealistic to hold that such an undertaking as that of appellant is within the Dominion jurisdiction and so to hold, I think, requires an unwarranted and tortured extension of the meaning of the phrase in head 10, s. 91 from which the Dominion jurisdiction stems. If the operations of the appellant Company were held to embrace navigation and shipping so as to confer jurisdiction upon the Dominion then it seems clear to me that the existence of one small vessel operated by the appellant Company merely for the purpose of carrying employees from the shore to the well site and carrying food, clothing and bedding to those employees from the shore to the well site, as incidental to the carrying on of the company's undertaking, also would suffice to confer Dominion jurisdiction."

We find the last sentence as contained in this quotation of particular relevance to the facts in the instant case since the court appears to emphatically reject the proposition that provisioning operations conducted in relation to employees engaged in the federal undertaking would also be subsumed under "Navigation and Shipping".

8. In like manner, the Saskatchewan Court of Appeal, in Bachmier Diamond v. Beaverlodge (1962), 35 D.L.R. (2d) 241, reasoned that the diamond and percussion drilling operations performed for the purpose of developing and discovering deposits of uranium ore, were collateral and not necessarily incidental to the federal work of producing, refining and the treatment of uranium. The reasoning is much the same in Murray Hill Limousine Service Ltd., v. Sinclair Batson et al, 66 CLLC ¶14,143, where the Quebec Court of Queen's Bench held that the operations of baggage porters, whose duties included the servicing of airlines passengers up to the time of and after the baggage left the control of the airlines' personnel, were not an integral part of airlines transportation. In a similar vein, the Ontario High Court in Re Colonial Coach Lines Ltd. et al and Ontario Highway Transport Board (1967) 62 D.L.R. (2d) 270, ruled that transportation services provided to airline passengers and crews to and from Toronto Airport, came within provincial auspices. At page 276, Donohue J. characterized the company's activities as follows:

"Air Terminal Transport Ltd.'s service is no doubt a convenience to the public in going to and from the airport but it is without doubt the case that the airport could continue to function without the service of Air Terminal Transport Ltd."

In our opinion, this characterization of "convenience" would also apply to the respondent's operations and although we are satisfied that, without its intervention, there could be some delay occasioned in the stocking of these ships with the provisions essential for their voyages, that factor of itself would not render such operations an integral and necessary part of the federal undertaking of "Navigation and Shipping."

9. In addition to the decisions referred to above, the Board has had occasion to review the following: Re Tank Truck Transport Ltd. 61 CLLC ¶15,335 at p. 190 (Ont. H.C.); Regina v. Ontario Labour Relations Board, ex parte Dunn (1963) 39 D.L.R. (2d) 346 (Ont. H.C.); Regina v Ontario Labour Relations Board, ex parte Northern Electric Co. Ltd. (1970) 11 D.L.R. (2d) 640 (Ont. H.C.). Having carefully reviewed the principles as contained in the above jurisprudence and taking into account the circumstances as set out herein, we find that the operations consisting of "Ship Chandler" services as provided by the respondent are not an integral part, nor are they necessarily incidental to the federal undertaking of "Navigation and Shipping". In con-

clusion, we are satisfied that the Board has the necessary jurisdiction to entertain and to proceed further in this application for certification.

10. Mr. D. A. McNabb, Examiner, is authorized to inquire into and report to the Board concerning the duties and responsibilities of J. K. Tucnik, classified by the respondent as "Salesman", with particular reference to his community of interest, if any, with the remainder of the employees as encompassed in the proposed bargaining unit.

5482-74-U: International Molders & Allied Workers Union (Complainant)
v. DELHI METAL PRODUCTS LIMITED (Respondent).

BEFORE: T. E. Armstrong, Q.C., Chairman, and Board Members W. H. Wightman and D. B. Archer.

APPEARANCES AT THE HEARING: E. C. Witthames and T. Bartley for the complainant, and D. L. Brisbin and L. Monkman for the respondent.

DECISION OF T.E. ARMSTRONG, Q.C., CHAIRMAN, AND BOARD MEMBER D. B. ARCHER:
July 8, 1974.

1. This is a complaint under section 79 of the Labour Relations Act in which the complainant alleges that Michael (Mike) Poppe has been dealt with by the respondent contrary to the provisions of sections 56 and 58 of the Labour Relations Act. The complainant requests that Michael Poppe be returned to his employment with the respondent with full redress.

2. On Thursday, April 4, 1974, Poppe's employment was terminated by Mr. Lorne Monkman, Industrial Relations Supervisor of the respondent. The position of the respondent is that Poppe was discharged because he reported to work with alcohol on his breath. The complainant, on the other hand, alleges that the true cause of the termination was that Poppe was active in the union's attempt to organize the employees of the respondent. In particular, the complainant contends that a few minutes before his termination, Poppe ripped up a petition opposing the union and that it was that event which brought about his discharge.

3. There is very little dispute as to the facts. Prior to his discharge Mr. Poppe was employed by the respondent for approximately two years as a swager operator. On April 4, 1974 he reported for work at approximately 3:15 p.m., for a shift commencing at 3:30 p.m. A few minutes after the shift started, he was approached by Kirby Ellis (a fellow employee and the son of Ron Ellis, the foreman of the tool and die room) who presented him with a petition opposing the union and asked him to sign it. Poppe stated that he did not want to sign the document and in fact tore it up and returned to his work.

4. Both Poppe and a fellow employee, Mike Dammon, testified that Kirby Ellis went immediately to the tool room. Within a few minutes Ron Ellis, the foreman of the tool room, was seen by both Poppe and Dammon to emerge from the tool room and head toward the office area. Poppe testified that Ron Ellis appeared upset and was "coloured" or red in the face. Neither Ron nor Kirby Ellis was called as a witness.
5. Some minutes later, the respondent's industrial relations supervisor, Mr. Monkman, came to Mr. Poppe's machine and summoned him to the office of Nick Shire, foreman of the Tube Department. We were told by Monkman that he asked Poppe if he had been drinking and that Poppe replied that he had not. When Monkman stated that he could smell alcohol on his breath and that others had also smelled it, Poppe admitted that he had one or two beers noon hour. Monkman asserted that he then reminded Poppe of an earlier warning concerning drinking and that Poppe neither denied nor acknowledged having received the earlier warning. Poppe asserted that he accused Monkman directly of firing him for ripping up the petition and that Monkman replied that he (Poppe) was being fired for "discrimination". Monkman denied that there was any mention of discrimination during the termination interview.
6. Monkman and Poppe then went to Monkman's office where Monkman was said to have called someone in payroll to arrange for the preparation of Poppe's termination pay. Poppe states that during that telephone conversation Monkman again referred to "discrimination" as the reason for his dismissal. Poppe was paid for one-half hour's work on April 4th and left the premises at approximately 4:00 p.m.
7. Poppe testified that a pre-arranged meeting was held at his home commencing at 12:00 noon on April 4th to "discuss the union" and to obtain membership cards. Present, in addition to Poppe, were four other employees of the respondent (including Armand Vanderveldt and Mike Dammon) and an organizer for the complainant union. Dammon brought twelve bottles of beer to the meeting and it was established that Poppe drank two bottles during the course of the meeting and that the others present consumed a similar amount. Some applications for membership in the complainant were signed at the meeting, which ended at approximately 1:30 p.m. Poppe then went with Vanderveldt to Vanderveldt's home, where they had coffee and continued their discussions until about 2:30 p.m. He then returned home, had a snack, made his lunch for the night shift and, with Vanderveldt, walked to work, arriving at approximately 3:15 p.m. All witnesses, including Mr. Monkman, testified that Poppe was neither intoxicated nor in any way incapacitated at any material time.
8. Considerable evidence was adduced concerning a one-day suspension resulting from an incident on January 11, 1974. Mr. Monkman testified that on that occasion Poppe had been observed staggering

around in the vicinity of his machine and that he had "taken a swing" at Shire, his foreman. As a result of further investigation, he was suspended for one day and, it was claimed, was warned that if he reported to work with the smell of alcohol on his breath again he would be discharged. When questioned on the earlier warning, Poppe was unable to confirm that it had been given in those terms. There was adduced in evidence a personal history record for Poppe (Exhibit 1) which purports to confirm the substance of the earlier incident. However, it was not claimed by the company that Poppe had been given any written warning nor that the personal history record had ever been brought to his attention.

9. Finally, the Board heard evidence concerning the way in which the incident of April 4th came to Mr. Monkman's attention and the factors which he alleged were relevant in his determination to fire the grievor. Monkman testified that between 3:30 p.m. and 4:00 p.m. he was in the printing shop area when he received a message to call Mr. Shire, the foreman of the Tube Department. Responding to the call, he met with Paul Schmidt, a lead hand in the Tube Department and someone by the name of Bass. Monkman stated that he was told by these men that Poppe had been drinking, that they could smell alcohol on his breath and that Poppe had "ripped up a piece of paper presented to him by an employee". Monkman testified that he did not ask what paper had been torn up by Poppe and that he did not find out that it was a petition against the union until after Poppe was fired. Following the discussion with Schmidt, Shire and Bass, Monkman proceeded to Poppe's machine and the events recorded in paragraphs 5 and 6 ensued.

10. In complaints under section 79 of the Act (as the Board has often observed) heavy reliance must be placed on circumstantial evidence. Typically, an employee will assert that there has been an anti-union motive for his termination, while the employer will deny that the termination has in any way been connected with the employee's union activity. It has been the Board's experience that self-serving assertions of this sort have little probative value and that the true reasons for the discharge can best be gleaned from objective circumstances of the sort cataloged in National Automatic Vending, 2 CLLC 1960-1964, ¶ 16,228.

11. In the instant case, the following events occurred in rapid succession: a union meeting at Poppe's home; Poppe's open and dramatic repudiation of the anti-union petition given to him at his work station by a foreman's son; the immediate reporting of the incident to supervision; and, finally, the discharge, within minutes of Poppe's destruction of the petition. In our view, the coincidence of these events within a few short hours establishes a prima facie case for the relief claimed, so as to shift the onus to the respondent to satisfy us that the termination was not motivated, in whole or in part, by anti-union animus.

12. The respondent's sole defence is that Poppe was discharge for having alcohol on his breath. If this was the only reason for his discharge, even though we might conclude that it reflects a very stringent disciplinary code on the respondent's part, we would be obliged to dismiss the complaint: see Fisher-Price Toys (Canada) Ltd., OLRB M.R., Feb. 1968, p. 116; Bell City Foundry (Brantford) Limited, OLRB M.R., Aug. 1966, p. 323. However, on all of the evidence, we are not persuaded, on the balance of probabilities, that the respondent was motivated solely by the fact that Poppe had alcohol on his breath. Monkman conceded that he was aware that Poppe had ripped up a paper. However, he contended that he learned that the paper was a petition in discussions with Ellis and Shire later that same afternoon, following Poppe's discharge. Where it is alleged that an employee has destroyed a document, the natural response, especially for the industrial relations supervisor, would surely be to obtain the details immediately. In all of the circumstances, we are not prepared to accept Mr. Monkman's assertion that he was unaware of the nature and significance of the document until after the discharge. On a point as critical as this, it would have been open to the respondent to call Messrs. Ellis, Shire, Schmidt or Bass, or any one of them, to corroborate Monkman's statement. In the absence of such corroboration, we prefer the evidence of the grievor, who has asserted unequivocally that the identity of the document was made known to Monkman during the discharge interview when he (Poppe) accused Monkman of firing him "because of the petition".

13. Both the personal history sheet and Mr. Monkman's account of the January 11th incident reveal that the allegations against Mr. Poppe on that occasion were of an entirely different character from the conduct attributed to him on April 4th. In the earlier incident, it was alleged that Poppe was seen staggering in the vicinity of his machine and that he attempted to assault a foreman. Moreover, he was said to be under the influence of alcohol on that earlier occasion. No such serious allegations were made on April 4th,

14. Even if it is assumed that the earlier warning was given in the terms indicated on the personal history record, the fact that the respondent may have had just cause to discharge Poppe is not conclusive, if an anti-union motivation existed as well: see, for example, Disposal Services Company, OLRB M.R. Jan., 1965, p. 529, where the Board held, in part:

"Counsel for the respondent argues that the union is not entitled to invoke the remedial provisions of section 65 of the Act [now section 79] because it has failed to prove that Weir's employment was terminated, as he states, "by reason only of the fact that he was a member of a trade union". Even if we were to accept the fact that there were other reasons for his discharge, it is, in our view, sufficient, in the circumstances

of the present case, to constitute a violation of the Act if one of the reasons for his discharge was that he was a member of the union. In consequence, apart from any question as to the extent to which any other reasons for his discharge might affect the nature and quantum of relief (and we are unable to find on the evidence that there were any such other reasons capable of affecting this) the aggrieved employee is entitled to complain and claim relief under section 65." We are unable to find on the evidence that there were any such other reasons capable of affecting this) the aggrieved employee is entitled to complain and claim relief under section 65."

See also Olympia and York Developments Limited [1973] OLRB Rep. 407, where at p. 413 the Board speaks of the anti-union motivation being a "contributing factor" in the decision to discharge; and also Canadian Linen Supply (Ontario) Limited, OLRB M.R. May, 1967, p. 100, where reference is made at p. 104 to the "primary motivation" for the discharge.

15. This reasoning has recently received judicial approval in Regina v. Bushnell Communications Ltd. et al., (1974) 1 O.R. (2d) 442. Mr. Justice Hughes, in considering the meaning and effect of Section 110(3) of the Canada Labour Code (the equivalent of section 58(a) of the Labour Relations Act) states at page 447 of the Report:

"In considering an enactment devoid of the words 'sole reason' or 'for the reason only' applied to the act of dismissal and resting only on the word 'because', the Court must taken an expanded view of its application. If the evidence satisfies it beyond a reasonable doubt that membership in a trade union was present to the mind of the employer in his decision to dismiss, either as a main reason or one incidental to it, or as one of many reasons regardless of priority, s. 110(3) of the Canada Labour Code has been transgressed. ..."

The decision of Mr. Justice Hughes was affirmed by the Court of Appeal in a decision released April 4, 1974 (as yet unreported) in which the Court concluded:

"We agree in substance with the result at which Hughes, J. arrived and in our view the question which the Court must determine is 'What motivated

the employer to take the action which he in fact took with respect to the employee?' If it is found that union membership is a ground for the action taken then a conviction should be made. Otherwise an acquittal. It is entirely a question of fact in each case for the trial Judge to determine, after assessing the credibility of the various witnesses, whether union membership was a cause of the action taken.

"In our view to create an offence under section 110(3) of the Canada Labour Code union membership must be a proximate cause for dismissal, but it may be present with other proximate causes."

16. In the instant case, we find that the respondent, in discharging Poppe, was motivated primarily by its displeasure at his activities in support of the complainant union on April 4, 1974. We are therefore of the view that the complaint must succeed. The Board directs that the respondent forthwith reinstate Michel Poppe in the same position which he held on the date of his termination, and that the respondent pay to Michel Poppe full compensation for any lost wages to which he is entitled to the date of reinstatement. On consent, the Board will remain seized of the matter, and if the parties are unable to agree on the appropriate amount of compensation, that issue will be determined by the Board upon the request of either party for a further hearing for that purpose.

DECISION OF BOARD MEMBER W. H. WIGHTMAN: July 8, 1974.

With respect to my colleagues, the "balance of probabilities" should have been more heavily influenced by Mr. Poppe's prior history, including, in particular, the events of and subsequent to January 11, 1974, leading to a final warning that, were he to report to work with the smell of alcohol on his breath again, he would be discharged.

On January 11, 1974 Mr. Poppe's deportment towards other employees was such as to cause the employer to issue this grave warning. At that point in time there was clearly no question of union activity associated with the incident. The incident was the subject of subsequent comment and concern by other employees in meeting with the management.

On April 4, 1974 Mr. Poppe's reaction, when approached by a fellow employee, was to rip up a document proffered to him by the employee. Whatever else may have transpired, the Industrial Relations Supervisor, Mr. Monkman, was advised of the disturbance and called to the scene. Mr. Monkman immediately detected the smell of alcohol on Mr. Poppe's breath and confirmed this with at least one other person

before summoning Mr. Poppe to a private office, where Mr. Monkman then advised Mr. Poppe that he was to be discharged.

In the absence of evidence or argument counter to Mr. Monkman's assertion that he was unaware of the contents of the paper torn up by Mr. Poppe, I would, on the balance of probability, dismiss the complaint.

5161-73-U: Warehousemen and Miscellaneous Drivers Local Union 419
(Complainant) v. LYMAN TUBE DIVISION, JANNOCK INDUSTRIES LIMITED
(Respondent).

BEFORE: Frank V. Boscariol, Vice-Chairman, and Board Members J. D. Bell and O. Hodges.

APPEARANCES AT THE HEARING: Robin B. Cumine and Peter Simoneau for the applicant; R. C. Fillion, G. P. Carleton and D. Dickinson for the respondent.

DECISION OF THE BOARD: July 11, 1974.

1. This matter was set down for hearing on July 9, 1974, following the failure of the parties to agree to the amount of compensation to be determined in relation to the aggrieved person, Peter Simoneau, pursuant to the majority decision of the Board dated April 10, 1974.

2. Regarding his attempts to obtain employment elsewhere, Simoneau testified that he had registered at Canada Manpower approximately three weeks after his termination but that he had limited his personal search to temporary jobs in the Mississauga and Oakville areas as discerned through the "Want Ads" section of the Toronto Star. He stated that there was no doubt in his mind that he would be subsequently reinstated by the Board and that in effect he felt that it would be unfair to accept potentially permanent employment from a prospective employer in such circumstances. There can be no question that this attitude on the part of Simoneau significantly reduced his opportunities for seeking alternate employment.

3. In the Murray Bros. Lumber Co. Ltd. case OLRB M.R. February 1969, p. 1194, the Board at page 1197 stated as follows:

"The law imposes a duty upon a person to take all reasonable steps to mitigate the loss caused by breach of contract and prevents persons from claiming compensation for any part of the damage which is due to his neglect to do so. This principle extends to persons whose employment relationship

is wrongfully terminated. The question of whether a person has taken reasonable steps to mitigate the damage is one of fact dependent upon the particular circumstances. These principles are applicable to complaints made pursuant to section 65(1) (now section 79) of The Labour Relations Act. The complainant must take reasonable steps to mitigate his loss and what is reasonable is a question of fact in each case."

4. Having carefully reviewed all of the evidence as adduced and taking into account the principles above cited, we find that although Simoneau took some active steps towards mitigating his loss, his efforts in this regard fell reasonably short of his duty to mitigate in these circumstances. Accordingly, and having regard to the discretion of the Board in this matter as set out in section 79(4)(c) of the said Act, we direct that Simoneau in these circumstances should be compensated for one half of the amount of the loss of his regular earnings.

5. The Board therefore directs that the respondent forthwith pay to Peter Simoneau the sum of \$631.40 as compensation for loss of earnings sustained.

5142-73-R: Local Union 1687 of the International Brotherhood of Electrical Workers (Applicant) v. H. ALLAIRE AND SONS COMPANY LIMITED (Respondent) v. Allaire Electrical and Mechanical Contractors (North Bay) Limited (Intervener) v. Group of Employees (Objectors).

BEFORE: George S.P. Ferguson, Q.C., Vice-Chairman, and Board Members J. D. Bell and A. Main.

APPEARANCES AT THE HEARING: Raymond Koskie and Lou Popovitch for the applicant; K. R. Valin, T. C. Carroll and L. Allaire for the respondent and intervener; Marcel Savage for the objectors.

DECISION OF GEORGE S. P. FERGUSON, Q.C., VICE-CHAIRMAN, AND BOARD MEMBER J. D. BELL: July 11, 1974.

1. The name "H. Allaire and Sons Limited and Allaire Electrical & Mechanical Contractors (North Bay) Limited" appearing in the style of cause of this application as the name of the respondent is amended to read: "H. Allaire and Sons Company Limited".

2. The name "Allaire Electrical and Mechanical (North Bay) Limited"

appearing in the style of cause of this application as the name of the intervener is amended to read: "Allaire Electrical and Mechanical Contractors (North Bay) Limited".

3. This is an application under section 55 of the Act in which it is alleged that there has been a sale of a business by Allaire Electrical and Mechanical Contractors (North Bay) Limited (hereinafter called "Allaire Electrical") to H. Allaire and Sons Company Limited (hereinafter called "H. Allaire"). In the alternative, the applicant submits that Allaire Electrical and H. Allaire should be treated as one employer under section 1(4) of the Act.

4. First, the Board proposes to set out the facts which form the background to the present proceeding. H. Allaire was incorporated on February 28, 1957. Allaire Electrical was incorporated on June 5, 1969. While both companies have similar objects and carry on business in the areas of North Bay, Sudbury, and Sturgeon Falls doing electrical and mechanical contracting, the scope of the work carried on by H. Allaire is broader.

5. In 1970, Allaire Electrical entered into an agreement with the applicant which agreement expired on December 31, 1971. On February 7, 1972, the applicant entered into a collective agreement with the Sudbury Electrical Contractors' Association which agreement expired on December 31, 1973. This collective agreement was binding upon Allaire Electrical as a member of the said Association.

6. At no time has the applicant ever obtained bargaining rights on behalf of the employees of H. Allaire since that company was incorporated in 1957. In fact, on three separate occasions, the applicant has been unsuccessful for various reasons when attempting to obtain bargaining rights for some or all of the employees of H. Allaire. The applicant first applied to obtain a certificate as bargaining agent for the employees of H. Allaire on May 21, 1970 (Board File 17858-70-R). By its decision dated June 3, 1970, the Board terminated the proceedings on this application due to the fact that the parties advised the Board that a collective agreement had been entered into. In fact, the applicant had signed a collective agreement with Allaire Electrical but not with H. Allaire. On September 22, 1970, the applicant again applied for a certificate as bargaining agent of employees of H. Allaire (Board File 18423-70-R). By its decision dated October 2, 1970, the Board dismissed this application due to failure on the part of the applicant to meet the requirements of the Board on the filing of a declaration concerning membership documents and evidence of membership prior to the terminal date. The applicant further applied for a certificate on October 2, 1973 (Board File 4520-73-R). By its decision dated October 26, 1973, the Board dismissed this application due to the fact that the applicant did not have sufficient members in the appropriate bargaining unit.

7. We believe it relevant to refer to a recent decision of the Board in the Elmont Construction Limited Case (Board File 4226-73-R). In that case, there was no prior history of applications having been made by the applicant to become the bargaining agent of employees of a corporation which was alleged to be associated with another company.

8. In the Elmont Case, the Board referred to a decision in the case involving Industrial-Mine Installations Limited, [1972] OLRB Rep. December 1029. For the purposes of this case, we would like to quote from paragraphs 14 and 15 of the Industrial-Mine Case:

14. The problem in this case is not the application of section 1(4) but its application on a piecemeal basis after bargaining rights have already been obtained with respect to some of the separate entities. In situations where the Board has previously granted a certificate, the interveners are in effect asking us to review the earlier decisions of this Board - that is a power that is usually exercised by the same panel of the Board that originally heard the matter. The matter is further complicated because some of the earlier certificates were granted when section 1(4) was not enacted. In other situations there was ample opportunity to seek the relief now requested at the time of the original application.

15. In the situation where there is a collective agreement, the parties have had the opportunity to negotiate to remove any difficulties inherent because of the associated or related company situation. They did not do so which indicates that the problem was not pressing. Moreover, if we were to apply section 1(4) in a situation where there was a collective agreement, would we then determine that the related or associated company was a party to the existing collective agreement? This is particularly difficult in this situation where there is an agreement with the Association of Millwrighting Contractors of Ontario which is a trade association, and it is not a party to these proceedings nor are the various companies which are claimed to be associated or related to the applicant.

9. Bearing in mind the criteria which have been applied by the Board in prior cases when dealing with section 1(4) of the Act, there may be in this case a substantial amount of evidence from which the

Board could conclude that the two companies H. Allaire and Allaire Electrical are closely associated or related. The evidence discloses that both companies used the same office and shop facilities in Sturgeon Falls although these premises are owned by one of the companies. The directors and officers of both companies are the same and it would appear that the personnel policies of both companies are under the control and direction of one person who is the director of both companies. Both companies own heavy equipment and machinery but it would seem that some equipment or machinery are, on occasion, used interchangeably by the two companies. There is no interchange of tradesmen between the two companies. Accounting and bookkeeping functions relating to both companies are carried on by the same persons and certainly there would not appear to be any signs which would provide public awareness of there being any separation of the two companies.

10. The prime question which must be answered by the Board is whether or not the Board should exercise its discretionary power under section 1(4) in a case of this kind. The power given to the Board to treat two corporations as constituting one employer is a discretionary power. The particular circumstances in each case must be weighed. Certain tests must apply and certain vital questions must be answered. For instance, has the applicant sought to have the Board exercise its discretionary power within a reasonable period of time after knowing of the existence of two corporations who are closely associated in their activities or business? Is the applicant attempting to disturb any existing collective bargaining relationship? Has the applicant been unsuccessful in its prior attempts to obtain bargaining rights through the normal process of certification?

11. Perhaps there is still some doubt as to whether, under an application brought under section 55, an applicant must first establish that a sale of a business has taken place before being able to seek other relief from the Board through the exercise of discretionary power under section 1(4) of the Act. If proof of a sale constitutes a valid condition before the discretionary power of the Board under section 1(4) could be exercised, then on that score alone the present application would fail because the evidence before us clearly does not support any allegation that a sale of a business took place.

12. It is our view that the use of the discretionary power under section 1(4) of the Act is not to be sought as a substitute for obtaining bargaining rights under normal certification procedures particularly by an applicant which has failed in previous certification proceedings and which has not sought relief from the Board under section 1(4) in proceedings after section 1(4) was enacted. Surely there is an onus on an applicant union, being aware of the circumstances over a period of years, to seek relief from the Board within a reasonable period of time.

13. Having regard to the foregoing principles and the particular facts of this current application, the Board determines that this is not an appropriate situation in which to find that there is one employer for the purposes of the Act and thus exercise the discretionary power permitted under section 1(4). This application is dismissed.

14. Board Member, Mr. A. Main, wishes to record his dissent from his decision for reasons to be given by him in writing at a future date.

5052-73-M: BREWERS' WAREHOUSING COMPANY LIMITED (Employer) v. United Brewers' Warehousing Workers' Provincial Board, representing Local and Branch Unions Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Trade Union) v. United Brewers' Warehousing Workers' Provincial Board, representing Local and Branch Unions, and the International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America, C.L.C. (Intervenors).

BEFORE: Rory F. Egan, Alternate Chairman, and Board Members O. Hodges and J.E.C. Robinson, Q.C.

APPEARANCES AT THE HEARING: J. W. Healy, Q.C., M. G. Mitchnick and C. V. Jones for the employer; L. A. MacLean, N. Wilson and S. D. Saxe for the trade union; C. Thomson, C. G. Paliare, S. Goudge and D. Wagner for the intervener.

DECISION OF THE BOARD: July 11, 1974.

1. As stated in the Board decision dated March 14, 1974, this matter came before the Board by way of a reference from the Minister pursuant to section 96 of The Labour Relations Act. The Minister has referred to the Board the question as to whether he has authority under The Labour Relations Act to appoint a conciliation officer.

2. The request to the Minister for the appointment of a conciliation officer was made by United Brewers' Warehousing Workers' Provincial Board, representing Local and Branch Unions Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (hereinafter referred to as the "Trade Union"). The Trade Union alleged the following in its application for the appointment of a conciliation officer:

The applicant trade union succeeded to the rights, privileges and duties of its predecessor (the Union named in the 1971-73 collective

agreement attached) by virtue of merger/affiliation action concluded in November, 1973. If this application for conciliation is opposed and the matter referred to the Labour Relations Board pursuant to Section 96(1) of the Labour Relations Act, the applicant trade union will tender evidence before the Ontario Labour Relations Board in support of its assertion that it has succeeded to the rights, privileges and duties of the said predecessor union, including evidence as to the approval of the Merger/Affiliation Agreement by the respective unions.

3. The reference to the Board by the Minister, as indicated in the decision of March 14, 1974, brings into play the provisions of section 54 of The Labour Relations Act. Section 54 provides as follows:

54.-(1) Where a trade union claims that by reason of a merger or amalgamation or a transfer of jurisdiction it is the successor of a trade union that at the time of the merger, amalgamation or transfer of jurisdiction was the bargaining agent of a unit of employees of an employer and any question arises in respect of its rights to act as the successor, the Board, in any proceeding before it or on the application of any person or trade union concerned, may declare that the successor has or has not, as the case may be, acquired the rights, privileges and duties under this Act of its predecessor, or the Board may dismiss the application.

(2) Before issuing a declaration under subsection 1, the Board may make such inquiry, require the production of such evidence or hold such representation votes as it considers appropriate.

(3) Where the Board makes an affirmative declaration under subsection 1, the successor shall for the purposes of this Act be conclusively presumed to have acquired the rights, privileges and duties of its predecessor, whether under a collective agreement or otherwise, and the employer, the successor and the employees concerned shall recognize such status in all respects.

4. As the result of the posting directed by the decision of March 14, 1974, a number of petitions were received from employees in the locals concerned in this matter. The vast majority of the signatories were opposed to the implementation of the Merger/Affiliation Agreement to which reference was made in the application.
5. The Brewers' Warehousing Company Limited (hereinafter referred to as the "Employer") opposed the appointment of a conciliation officer. The opposition was based upon the grounds that the interveners had given notice of desire to bargain for the renewal of the collective agreement into which the interveners and the company had entered in 1971. The Employer had responded to the notice as required under the Act and negotiations were in progress with the interveners which comprise the only bargaining agent of which the company was legally aware. A new collective agreement was in fact executed on January 30, 1974.
6. The interveners objected to the Trade Union's request on the ground that it was untimely because there was a collective agreement in force. The interveners further alleged that the Trade Union had no status before this Board because it does not properly represent the employees in the bargaining unit with which we are here concerned. This latter allegation, in effect, is a challenge to the validity of the Merger/Affiliation Agreement relied upon by the Trade Union as entitling it to request conciliation.
7. The resolution of the question concerning the right of the trade union to seek the conciliation services requires, therefore, an investigation into the constitutional ability of the Trade Union to conclude a Merger/Affiliated Agreement, and if such ability exists, the question as to whether the proper procedural steps were taken to bring about the merger.
8. The constitution of International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America (hereinafter called the "International") was filed with the Board as Exhibit #1. It represents the constitution as it existed prior to a Special Convention held at Cincinnati in November of 1973.
9. The Board heard a considerable amount of evidence indicating the concern of the International with the question of merger or affiliation with various other unions over the course of a number of years. The proceedings of the 34th Convention of the International held at Toronto in August 1956 contain reference to reports received on the possibility of merger and to recommendations that merger possibilities be pursued. Reference to the question of merger appears in reports of proceedings of subsequent conventions. It is not proposed to go into the history of the merger proposals and the actions taken with respect thereto. It suffices, for the purpose of this hearing, to note that there exists

a lengthy history dealing with the question of merger with other unions so that the notion is not surprising or novel.

10. The quest for a union with whom the International might amalgamate ended when the International and the International Brotherhood of Teamsters entered into two agreements, each dated July 19, 1972. One of these agreements provides that the parties thereto will refrain from raiding or interfering with the bargaining relationships with the other. The other agreement records the intent of the parties thereto to merge or affiliate.

11. In due course, following the execution of the above-noted agreements, the parties thereto drew up the Merger/Affiliation Agreement which was approved in final form on September 18, 1973. The Trade Union relies upon the adoption of this agreement by a Special Convention of the International held in Cincinnati commencing November 5, 1973 as the basis for its claim to be the successor to the interveners. It is, of course, the contention of the Trade Union that the Merger/Affiliation Agreement was adopted in accordance with the terms of the constitution of the International as amended by the Convention.

12. It is clear from a reading of the terms of the Merger/Affiliation Agreement that what it contemplates is the dissolution of the International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America by absorption by or merger with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. It further contemplates what it refers to as the affiliation of the locals of the former with the Teamster Union. This intent emerges from the first paragraph of the agreement which reads, in part, as follows:

NOW THEREFORE, it is agreed as follows:

1. Simultaneously with the approval of this Agreement in the manner prescribed in Paragraph 19 hereof, all Local Unions chartered by the United Brewery Workers shall become affiliates of the International Brotherhood of Teamsters and all members of such Local Unions shall be deemed for all purposes to be members of the International Brotherhood of Teamsters. The International Brotherhood of Teamsters shall issue charters to such Local Unions without fees or conditions of any kind and, subject to the provisions of this merger/affiliation agreement, all provisions of the Constitution of the International Brotherhood of Teamsters, including the charter provisions, shall be deemed immediately effective and binding upon

such Local Unions and their members; provided, however, that the provisions of Article VII, Section 3 of said Constitution requiring the submission and approval of charter applications shall not be a precondition to the affiliation of such Local Unions with the International Brotherhood of Teamsters but such charters shall be issued in accordance with the procedures prescribed by the Secretary-Treasurer of said International Union. Whatever rights such Local Unions and their members may have under the Constitution of the United Brewery Workers shall be terminated upon the approval of this Agreement in the manner provided in Paragraph 19 hereof except as may be specifically provided herein and in the Resolution of the Disposition of the Assets and Property of the International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America which is attached hereto and made part hereof.

13. The resolution concerning the disposition of assets of the Brewery Workers referred to in the foregoing paragraph contains the following:

NOW, THEREFORE, BE IT RESOLVED by the delegates to this Special Convention of the United Brewery Workers as follows:

1. The General Executive Board and principal officers of the United Brewery Workers are hereby authorized to take all necessary steps to complete the act of merger, anything in the Constitution of the United Brewery Workers to the contrary notwithstanding; such actions to include, but not be limited to, conveying, or transferring to, or vesting in the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America all rights, title and interests which the United Brewery Workers may have in any property, real and personal; its other assets, receivables and monies of whatever nature and wherever situated and however held by it, or in which it has any interest, legal or equitable, including its insignia and union label; and all of the powers, privileges and rights which are vested in the United Brewery Workers and any of its officers, including all books and records;

in consideration of which the International Brotherhood of Teamsters shall then assume and become liable for all of the United Brewery Workers' debts and other obligations which have been disclosed to and accepted by the International Brotherhood of Teamsters.

14. In assessing the meaning of the constitution of the International, the validity of the actions taken with respect to its amendment and the adoption of the Merger Agreement, the Board is, of course, governed by the law applicable within its own jurisdiction and by the provisions of The Labour Relations Act. With that in mind, the Board respectfully cites the following passages from the judgment of Evans, J.A. of the Ontario Court of Appeal in Astgen et al. v. Smith and International Mine, Mill and Smelter Workers, 69 CLLC ¶ 14,198:

Prior to dealing with the merger agreement I consider it desirable to determine the precise legal status of a trade union or labour union, the relationships existing among the membership inter se and the relationships of each member to the totality of the persons associated together. I concede at the outset that a labour union under the Labour Relations Act R.S.O. 1960 Ch. 202 and allied legislation has a "status" conferred by such legislation which makes it somewhat different from a fraternal organization or an athletic club but apart from such statutes a labour union is essentially a club, a voluntary association which has no existence, apart from its members, recognized by law. A club is basically a group of people who have joined together for the promotion of certain objects and whose conduct in relation to one another is regulated in accordance with the constitution, by-laws, rules and regulations to which they have subscribed.

...Mine Mill is not a corporation, individual or partnership, and is accordingly not a legal entity; it is an unincorporated group or association of workmen who have banded together to promote certain objectives for their mutual benefit and advantage and in law nothing is recognizable other than the totality of members related one to another by contract. The objects and purposes of the

association are spelled out in the memorandum of association usually referred to as the "constitution"; the by-laws or rules provide the machinery for the proper carrying out of activities intended to advance the objectives and purposes of the voluntary association. Each member of Mine Mill, upon being granted membership, subscribed to those purposes and objects and in so doing entered into a contractual relationship with every other member of Mine Mill. Rand, J. in Orchard et al. v. Tunney [1957] S.C.R. 436 at p. 445 stated:

... each member commits himself to a group on a foundation of specific terms governing individual and collective action, ...and made on both sides with the intent that the rules shall bind them in their relations to each other.

I adopt also the proposition stated by Thompson, J. in Bimson v. Johnston et al. [1957] O.R. 519 at p. 530 which was affirmed on appeal [1958] O.W.N. 217:-

...that a contract is made by a member when he joins the union, the terms and conditions of which are provided by the union's constitution and by-laws; ... The contract is not a contract with the union or the association as such, which is devoid of the power to contract, but rather the contractual rights of a member are with all other members thereof.

The contract of association is not between the member and some undefined entity which lacks the capacity to contract; it is a complex of contracts between each member and every other member of the union. These are individual contracts impressed with rights and obligations which cannot be destroyed in the absence of the specific consent of each person whose rights would be affected thereby.

15. The constitution of the International as it existed immediately prior to the Convention in November 1973 provided as follows in Article X, Section 13(a):

Sec. 13. (a) The Convention shall have the right to adopt new laws; make changes in or rewrite the International Constitution; designate dues and assessments; change the form of organization of the International Union; and make such provisions and rules as may become necessary for the best interests of the International Organization.

16. It was argued by the Trade Union that this section was wide enough to permit the Convention to repeal Section 1 of Article XIII of the constitution and the adoption of the Merger/Affiliation Agreement. It is to be noted, however, that the section does not provide for merger but only for a change of form of the International and the making of provisions and rules for the best interest of the organization. In other words, the section contemplates the continues existence of the international organization.

17. Article XIII, Section 1 states:

Sec. 1 The International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America cannot be dissolved as long as three (3) affiliated Local Unions are desirous that it be kept in existence.

18. The continued existence of the International was thus guaranteed by Article XIII so long as three affiliated Local unions desired that it be kept in existence. The section is framed in the negative and is in the form of a prohibition against dissolution so long as the conditions set out therein exist. The constitution is devoid of any article or section which deals affirmatively with the question of dissolution or merger. In the opinion of the Board, Section 1 of Article XIII embodies a fundamental guarantee.

19. The constitution contains a further section which is also of the nature of a guarantee. Article IV deals with the subjects of local unions, branches, affiliation, and charters. Section 1(a) of the Article reads:

Section 1 (a) Any local group comprised of twenty (20) or more employees may affiliate with the International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers

of America, provided at least twenty (20) such employees apply for a Local Union charter and meet the requirements of the International Constitution and the General Executive Board.

Section 2 of Article IV provides:

Sec. 2 Any Local Union chartered by the International Union shall continue to exist as a Local of the International Union, unless its charter is revoked or suspended, as long as seven (7) or more members who are willing to comply with the Constitution of the International Union desire to remain in the Local Union.

20. On October 13, 1973, the International convened a Special Canadian Conference at Calgary for the purpose of presenting to the delegates from Canadian locals the Merger/Affiliation Agreement with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America whose officers also attended the meetings. The written account of the proceedings of this Conference was entered as an exhibit at the hearing before the Board. At the Calgary convention the entire Merger/Affiliation Agreement was read to the delegates. It might be noted here that Section 18 of the Merger/Affiliation Agreement provides as follows:

18. It is specifically understood and agreed that in approving this Agreement as provided in Paragraph 19 hereof, the Special Convention of the United Brewery Workers will thereby repeal and nullify Article XIII, Section 1 of the United Brewery Workers Constitution if said section has not been previously repealed by separate action of said convention.

21. It is quite clear that the delegates from the Canadian locals in attendance at the meeting in Calgary were very deeply concerned with the question of the preservation of at least that degree of autonomy that they enjoyed under the constitution of the International. The delegates were also concerned with the very important and related question as to whether affiliation or merger with the Teamsters would leave them outside the Canadian Labour Congress. There was also concern expressed that because of the seriousness of the step that was contemplated by the agreement no referendum would be held which would enable the grass roots membership to express an opinion. It might be remarked, incidentally, that one of the delegates acknowledged that ample chance had been given to the people at the Convention to ask questions but that the problem seemed to be in getting answers.

22. On October 14, 1973, a committee of Canadian members of the interveners was formed. The purpose of the Committee called The Committee in Defence of Our Union was to co-ordinate opposition to the Merger/Affiliation Agreement. The Committee prepared the following document to be sent to K. F. Feller who was the International President of the International:

AMENDMENT TO THE RESOLUTION TO MERGE WITH THE
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

WHEREAS this Convention acknowledges the cultural, economic and national interests of Canadian members;

AND WHEREAS the proposed merger of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and the International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America must allow for the continued development of these interests within the democratic framework expressed in our Constitution;

BE IT RESOLVED that the proposed merger agreement as presented to this Convention be amended to provide for the right of self-determination and continued existence of Canadian Locals with full Canadian autonomy within our Constitution.

23. The Special Canadian Conference was followed by the Special Convention of the International at Cincinnati commencing on November 5, 1973. Delegates to this convention were issued kits. Among the items in the kits was the following document:

PROPOSED AMENDMENT
REPEALING ARTICLE XIII, SECTION 1 OF
INTERNATIONAL CONSTITUTION

Whereas Article X, Section 13(a) confers on the Convention broad powers to adopt new laws, rewrite the International Constitution, change the form of organization of the International Union and make such other provisions and rules as many become necessary for the best interests of the International Union, and

Whereas said Section has been interpreted and applied in the past as authorizing the Convention to act upon proposed mergers and affiliations with other organizations, and it

is desirable that any possible doubt as to the authority of the Convention be removed,

Now, therefore, be it resolved that Article XIII, Section 1 of the International Constitution be and it hereby is repealed and the following is substituted in its place:

Any other provision in this Constitution notwithstanding, this International Union may be dissolved and/or merged or affiliated with or disaffiliated from another organization by action of a regular or special convention.

24. The program called for the adoption of the above amendment prior to the reading of the resolution by the Canadian local unions calling for an amendment to the Merger/Affiliation Agreement.

25. On the basis of the foregoing priorities, it is quite apparent that the Canadian amendment would be placed before the Convention at a time when it would be too late for any effective action. On realizing this, the Canadian group drafted what it termed an emergency resolution. This resolution was as follows:

P R O P O S E D A M E N D M E N T

Article XIII, Section 1 of International Constitution
Special Convention - November 5th, 1973

WHEREAS this is a Special Convention called for the purpose of sanctioning at the Convention a "Merger Affiliation Agreement" between International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America, and

WHEREAS a number of local unions of this international union are opposed to the repeal of Article XIII, Section 1 of the International Constitution and the number of local unions is greater than three, and

WHEREAS a number of local unions of the International Union of United Brewery, Flour, Soft Drink and Distillery Workers of America are opposed to merger or affiliation with International Brotherhood of Teamsters, Chauffeurs, Warehousemen

and Helpers of America or to dissolutionment of the International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America.

NOW THEREFORE BE IT RESOLVED that Article XIII, Section 1 of the International Constitution be and is hereby amended by adding the following paragraph:

Any other provision in the Constitution notwithstanding any local union of this international may by a vote of its membership merge or affiliate with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and such merger or affiliation shall be without prejudice to the rights of any local union opposed to any such merger/affiliation to continue its existence under the Constitution of the international or in such manner as members of said local union may determine, with said local union, to retain all property, rights, duties and responsibilities of said local union arising in or under the Constitution of this International Union as of November 4, 1973 and existing prior thereto.

26. The foregoing document was signed by delegates representing ten local unions. The Canadian delegates attempted to have the resolution placed before the Convention as an emergency resolution but the attempt was rules out of order by the Chairman. The Canadian delegates then left the Convention and the Merger/Affiliation Agreement was passed by the remaining delegates.

27. It is clear from all of the foregoing, and it was in fact admitted in evidence, that at the time of the Cincinnati convention there were at least three affiliated local unions who were opposed to the merger and who desired to keep the International in existence.

28. Article XIII, as already noted, is a covenant by the membership that the International will not be dissolved so long as three locals are desirous that it be kept in existence. The section was obviously recognized as presenting a serious obstacle to the valid adoption of the merger agreement.

29. As already observed, the Convention purporting to exercise the powers contained in Article X, Section 13(a), which is set out above, proposed and passed an amendment to Article XIII, Section 1. The amendment was for the purpose of removing the guarantee contained in Article XIII.

30. The Board finds that Section 13(a) of Article X does not grant to the Convention specific powers to merge or otherwise dissolve the International Union. In fact, it clearly indicates that the powers referred to therein are to be exercised for the continuous existence of the International. The power to authorize dissolution, therefore, has been reserved to the membership at large and dissolution or merger would require the sanction of the membership.

31. The foregoing view of Article X, Section 13(a) is confirmed when reference is had to the very vital and fundamental guarantee in Article XIII which the Special Convention sought to expunge. The presence of the guarantee in the constitution makes it imperative that weight be given to it otherwise it becomes mere meaningless verbiage. Article X, therefore, is limited in its extent and stops short of the powers of merger or dissolution.

32. The attempt by the Special Convention to remove the guarantee in the face of the known opposition of at least three locals is tantamount to an attempt by the Convention to alter a fundamental provision which goes to the very root of the organization and to clothe itself with the powers of dissolution which the membership reserved to themselves in adopting the guarantee. The guarantee is not given by local to local nor by locals to the International but by members to members. The guarantee is thus revocable only by the individual members and not by the locals or their delegates.

33. Further strength is added to the position taken by the interveners by the presence in Article IV, Section 2 of the constitution which guarantees the continued existence of local unions so long as seven or more members who are willing to comply with the constitution of the International Union desire to remain in the local union.

34. The Board accordingly finds, having regard to the constitutional provisions of the International, that the Trade Union has not acquired the rights, privileges and duties of the interveners by reason of a merger, amalgamation or transfer of jurisdiction within the meaning of section 54 of The Labour Relations Act and that consequently it is not entitled to conciliation services.

35. The answer to the Minister, therefore, is "No".

5072-73-U: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) (Complainant) v. FRUEHAUF TRAILER COMPANY OF CANADA LIMITED (Respondent).

BEFORE: D. H. Kates, Vice-Chairman, and Board Members J. D. Bell and P. J. O'Keeffe.

APPEARANCES AT THE HEARING: L. A. MacLean for the complainant; W. Gibson Gray, Q.C. and A. Purdon for the respondent.

DECISION OF D. H. KATES, VICE-CHAIRMAN, AND BOARD MEMBER P. J. O'KEEFFE:
July 12, 1974.

1. This is an application under section 79 of the Act wherein it is alleged by the complainant that the grievor, Mr. Fred Radziwolek, was discharge by the respondent contrary to section 58(a) of The Labour Relations Act.

2. Mr. Radziwolek was hired by the respondent company in March 1973 as "a load board operator" and apparently discharged the duties attached to this job in a manner satisfactory to the employer. In July, 1973 he was approached by Mr. K. N. Milne, manager of the planning and material control department of the respondent's operations and was offered the position of "material control clerk". This job offer was viewed by the grievor as a promotion although no wage increase was extended. On July 16, 1973 the grievor commenced his new job under the initial supervision and training of the incumbent he was replacing. In this regard he was told that it would require a minimum on one year "to get the hang of the job". During his stay at this position the grievor was under the immediate supervision of Mr. W. D. Grier, material control supervisor. From the date of commencing his new job to the date of his discharge on January 16, 1974, the respondent largely through the efforts of Mr. Milne kept a written account of the grievor's job performance. Because the grievor's alleged shortcomings in performing his duties of material control clerk is essential to the respondent's "theory" of the case, an attempt will be made to briefly describe the responsibilities of the material control clerk.

3. The respondent company is engaged in the enterprise of manufacturing trailers, tankers and other vehicles for the purpose of the carriage of materials by highway transport. It appears that production of these vehicles are scheduled some months in advance to insure that there will be a sufficient complement of parts to fill a particular order. Parts are usually obtained from three sources. Either they are available from existing inventory or are manufactured on site in the respondent's press department or are purchased from branch plants in the United States or from outside contractors. The essence of the position of "material control clerk" in this context is to maintain

and control the inventory level of parts and materials to meet established rates of production.

4. There are nine material control clerks employed by the respondent in its material control department. Each is issued assignments with respect to the manufacture of a particular vehicle. The objective of the assignment is delineated on blue prints describing the sector of the vehicle for which the material control clerk is responsible. When a job order is received he must satisfy himself that the parts required and reflected on the blue print will be available in sufficient quantities prior to the commencement of the scheduled production process. Integral to making the initial judgment is the number of parts available from existing inventory. For this purpose "stock record cards" must be maintained by the material control clerk indicating at any given time the quantity of parts already available. If insufficient to meet the demands of a particular order then, the material control clerk in a given situation must either issue a parts fabrication order to the press shop or issue a requisition to purchase the necessary materials. Thereafter the material control clerk must pursue the procurement of these parts by contacting the suppliers upon whom the respondent would be dependent for its materials. If difficulty is foreseen in obtaining these parts then the matter is reported to Mr. Grier who would then be responsible for making the appropriate adjustments with respect to the scheduling of the production process. Meetings are held at the end of each day in the office of Mr. Grier and are attended by all material control clerks. At these meetings difficulties with respect to shortages in the supply of materials are discussed.

5. It can readily be discerned that the maintaining of accurate "stock record cards" is essential to appreciating the measure of understanding of a particular individuals progress at the job of material control clerk. Mr. Radziwolek, it appears, was experiencing much difficulty in adapting to his new job responsibilities and his deficiencies resulted in holding up the productive process thereby causing the respondent considerable expense. These deficiencies were reflected basically in the "overages" and "shortages" of materials indicated in the stock record cards for which the grievor was responsible. Indeed, the respondent indicated that some cards were so hopelessly inaccurate that no measure of reliability could be attached to them. The inadequacies of the grievor's records were made manifest with respect to several incidents related to the Board through the witness, Mr. Milne, who kept an account written contemporaneously with the commission of these wrongdoings. As a result of these incidents, it is counsel's "theory of the case" that the respondent had cause to discharge the grievor. Before exploring this matter further, the Board proposes to delineate the circumstances surrounding the complainant's allegation that the discharge was effect because of the grievor's union activity.

6. It appears in July, 1973, the complainant filed an application for certification with this Board for group of office and clerical employees in the respondent's employ. The complainant heretofore held bargaining rights for the respondent's production employees. The grievor played a role in the organizational campaign by seeking to sign up employees as members in the complainant trade union. The complainant's initial application was withdrawn in September 1973 because of admitted irregularities in the complainant's evidence of membership. An application for leave to withdraw was denied by the Board and the application was thereby dismissed. (see; Fruehauf Trailer Company Limited OLRB M.R. October 1973 547). Thereupon a second application for certification was filed on November 14, 1974 requesting a pre-hearing representation vote. The pre-hearing representation vote took place as directed by the Board in the ordinary course on December 3, 1973. During this period and subsequent to the taking of the vote, the grievor continued to campaign on behalf of the applicant and indeed on January 15, 1974, signed up as a member of the complainant a recently hired employee. This incident appeared to occur within observation of Mr. Milne who after confronting the grievor with respect to the nature of the transaction, was left without a satisfactory explanation. The next day on January 16th, the grievor's discharge was effected.

7. The Board heard testimony adduced through the cross-examination of Mr. Milne relating to the respondent's posture during the course of the complainant's organizational campaign. It appears that regular meeting of supervisory personnel took place under the stewardship of Mr. Purdon, personnel manager of the respondent employer. Here strategy was discussed with a view to resisting the complainant's organizational campaign as well as safeguarding the efficient operation of the enterprise during the course of that campaign. More particularly, supervisors were instructed to observe the employees while on the working premises to make sure no union activity occurred. And, in the event that such activity did occur the incident was to be reported to Mr. Purdon. It was in the discharge of these instructions that Mr. Milne described the incident referred to in paragraph 6 herein. Indeed, one employee, a Mr. Flatman, was reported to Mr. Purdon and reprimanded for his union activity. He was instructed by Mr. Purdon in the presence of Mr. Milne not to discuss union matters on the premises or solicit membership support or else disciplinary action would be taken if caught.

8. Mr. Radziwolek in his testimony related to the Board two other incidents pertaining to his union activity which he suggests aroused suspicions that his discharge, was for not other reason than his contribution to the complainant's organizational campaign. In September, 1973 the grievor was talking to a co-employee who was working on behalf of the union with respect to a matter pertaining to a part required by the production department. He was confronted by Mr. Grier who told him that he had no business talking to the employee in question.

He was advised in future to approach either Mr. Grier or Mr. Milne on matters pertaining to such information. The other incident related to a certain conversation he had with Mr. D. Gordon, president of the Local representing the production employees. Mr. Milne observed this conversation and inquired of the grievor the subject matter of their talks. The grievor indicated that they were just exchanging pleasantries. No further incident of substance was related to the Board with respect to knowledge by the respondent of the grievor's activities save the incident of January 15, 1974.

9. On that day when the grievor had returned from his lunch break he approached and succeeded in persuading an employee of some two weeks standing with the respondent to join the complainant. The card transaction allegedly was observed by Mr. Milne from a distance of approximately 30 feet away in his glass enclosed office. After Mr. Milne saw what had occurred he approached Mr. Radziwoleck who by this time had put the card in his pocket. Mr. Milne requested that he see the card. The grievor denied possession of a membership card causing Mr. Milne to return immediately to his office without further comment. Both accounts given by Mr. Milne and Mr. Radziwolek appear to coincide with one another. Indeed, in answer to a question put by counsel in cross-examination, Mr. Milne stated, "Quite honestly, I thought it was a card". And furthermore had the grievor admitted the solicitation of the card on the company's premises Mr. Milne stated, "he would be warned not to do so during working hours". The next day the grievor was fired.

10. Counsel for the complainant argued quite strenuously that there was apparent on the evidence a pattern of conduct effect by the respondent that should persuade the Board on the balance of probabilities that the grievors' discharge was for union activity contrary to section 58(a) of the Act. Furthermore, even if the said union activity was not the causa causans of the discharge there still remained sufficient evidence for the Board to find that the grievors activities on behalf of the complainant was "the contributing cause" of the discharge.

11. During the course of these proceedings evidence was adduced by counsel for the respondent in support of the proposition that the discharge was effected for cause. On October 18, 1973, a memorandum written by Mr. Milne indicated that the grievor had misunderstood an instruction to requisition the purchase of certain aluminum plate parts from the respondent's Decateur Plant to be used for the manufacture of dump trucks. By written memorandum dated December 28, 1973, Mr. Milne recounted several incidents relating to a conversation held with the grievor in the presence of Mr. Grier. During this conversation Mr. Radziwolek was told he was not to receive a semi-annual merit increase "due to his work not being satisfactory". Examples were

given and related in the memorandum in support of the position taken. One particular issue related to whether the respondent's Delphis plant owed the Dixee plant some lights needed for the production of a certain trailer. The grievor indicated that no lights were indeed owed. It was later discovered that lights were owed from Delphis as a result of orders made in November and December. The grievor thereupon arranged with persons at Delphis for the transport of this heavy cargo by airplane. The flight was cancelled in time and a panel truck dispatched to Delphis to pick up the parts to keep the production line going. Further examples of Mr. Radziwolek's deficiencies were attributed directly to inaccurate maintenance of his stock records cards. These related to harnesses and ribs needed for the production of dump trucks. Again these shortcomings were recorded by Mr. Milne in a memorandum dated January 9 and 14, 1974. It soon became apparent in Mr. Milne's view that the source of the grievor's difficulties was his failure to grasp the operation of the respondent's inventory system. Further investigation corroborated Mr. Milne's appreciation of the grievor's shortcoming in that the stock record cards were not being adequately maintained.

12. The Board entertained at length counsel's attempts to impugn the credibility of Mr. Milne with respect to the operation of the inventory system. We agree with counsel's submission that it was not the respondent's system that was on trial. We are further satisfied, on counsel's admission, that the system is not a perfect one and that it is inherent in the operation of that system that errors will be made. Furthermore, having regard to the number of years the respondent has applied the system to its operations and the quantity and quality of its productive processes during this period of time, we are not prepared to question or criticize the efficacy of that system in arriving at a conclusion of the issues put before us.

13. Nevertheless the evidence with respect to the operation of the respondent's inventory control system and the role played by the material control clerk in the context of the operation of that system is relevant insofar as it may cast some light in ascertaining whether Mr. Radziwolek's union activities did indeed play a part in the employer's decision to discharge. In this regard, we must ascertain on the basis of all of the evidence adduced throughout these proceedings whether or not the grievor's support of the complainant's attempts to organize the respondent's employees was a matter separate and apart from the considerations applied by the employer in firing the grievor. There was some debate during the course of counsel's argument as to whether in finding whether an unfair labour practice has been committed, the Board need necessarily determine that the prime reason of the discharge was attributable to a grievor's union activity. In this regard counsel for the respondent argued that the real reason for the discharge was the grievor's incompetence in handling the duties and responsibilities of material control clerk. Counsel for

the complainant submits that indeed the grievor's union activities if not the actual cause of the discharge, was certainly a contributing cause.

14. The Board has in past decisions delineated the requirements necessary to satisfy us of a violation of the unfair labour practice provisions of the Act pursuant to a complaint filed under section 79 of the Act. More particularly the Board stated in The Marsh Frozen Food Case OLRB M.R. August 1970 595 at p. 598;

"The onus in applications such as this rests upon the union. It must establish on the balance of probabilities that the respondent in terminating the employment of Killen violated the provisions of The Labour Relations Act. It is therefore not a question of whether the respondent can show just cause for its actions. The absence of a credible explanation for its actions however may, in the presence of cogent evidence offered by the union permit, if it does not invite, the inference that its actions are culpable."

15. The issue therefore before this Board is not whether the respondent had cause to discharge Mr. Radziwolek. Indeed, based on the evidence adduced before this Board the employer may very well have had some justification to be dissatisfied with the grievor's work performance. Nevertheless, we must determine whether the fact of the grievor's union activity played a part in effecting that discharge. For example in The Disposal Services Company Case OLRB M.R. January 1965 529 the Board held in part;

"Counsel for the respondent argues that the union is not entitled to invoke the remedial provisions of Section 65 of the Act (now section 79) because it has failed to prove that W's employment was terminated, as he states, "by reason only of the fact that he was a member of a trade union". Even if we were to accept the fact that there were other reasons for his discharge, it is in our view, sufficient, in the circumstances of the present case, to constitute a violation of the Act if one of the reasons for his discharge was that he was a member of the union."

(see also; the recent decision of the High Court in Regina versus Bushnell Communications Ltd. et al. [1974] 10R 2nd 442 at page 447 per Hughes J., and upheld by the Court of Appeal by its decision [as yet unreported] dated April 2, 1974).

16. The Board is satisfied that save for the incident of January 15, 1974, the grievor's union activity in the autumn of 1973 aroused only a suspicion that his contribution on behalf of the complainant may have played a role in his discharge. Mere suspicion standing alone, however, does not or will not of itself satisfy us of a violation of section 58(a) of the Act (see Evoy-McLean Ltd. case, OLRB M.R. May 1969 265). We are satisfied however that Mr. Radziwolek along with his fellow employees were under the observation of the company's supervisory personnel with respect to the nature and extent if any of their union activity. And indeed, the Board, having regard to the documents filed in evidence, holds that the respondent exhibited a strong anti-union animus during the course of the disposition of the applicant's campaign to organize its office and clerical employees.

17. In the memorandum dated January 9, 1974, six days prior to the card incident, Mr. Milne indicated the following:

"I told him his performance was not satisfactory and if an improvement was not shown we would have to make personnel changes as we could not rely on his work or information."

On January 14, a day prior to the incident of January 15, 1974, Mr. Milne wrote another memorandum reviewing the grievor's shortcomings and more particularly indicated the following:

"To sum up, at least 98% of the cards have incorrect quantities and unless completely recalculated since inventory, will lead to line shortages."

18. We are of the view that had the decision to discharge been cast at this point after Mr. Milne had indicated that "if improvement was not shown we would have to make personnel changes" then, the Board would have no basis to find that the discharge was effected for union activity. But, indeed, this decision was not made because another memorandum was written and dispatched to the personnel department as was Mr. Milne's habit since September 1973. Surely if a finding was made that 98% of the grievor's stock record cards were inadequate and this affected the very operation of the respondent's production process then further prevarication on the question of the grievor's discharge became unnecessary. It is our view therefore that no decision was made at this time to dismiss the grievor.

19. Rather, the discharge was made on January 16, a day after the grievor was observed by Mr. Milne in the process of completing a transaction to sign up a co-employee as a member of the complainant. Had Mr. Milne warned Mr. Radziwolek to desist from such union activity on

company time and on its premises then he would have acted within the permissible limits allowed under section 62 of the Act. The Board has gone on record in many of its cases as stating that application of section 62 of the Act as justification for exacting discipline "must be bona fide in that the motive of the actions taken is not a veil to deprive an employee of his rights under the Act." (see; McNair Products Company Limited OLRB M.R. October 1966, 518). In any event, for purposes of the record no attempt was made by counsel to invoke the provisions of S62 as a defence to the employer's action. Indeed, the very theory of the respondent's case would suggest that the sole reason for the discharge was grievor's incompetence. That is to say, it was submitted the grievor's union activity played no part in the decision.

20. Assuming but without deciding that there was cause to discharge the grievor, this Board cannot escape from drawing the inference that the very immediacy of the discharge following the card transaction rendered the grievor's union activity a reason if not the only reason for his discharge. This inference is stated much more succinctly in the Marsh Frozen Foods Case (supra) at p. 598;

"In the present case, we believe that the proximity in time between K's attendance at the union meeting, his organizational activities in the plant and his discharge, is a vital and cardinal consideration in this matter."

21. This Board having operated on the assumption that there may have been cause other than his union activity for the grievor's discharge, feels compelled to make one comment on that matter. The respondent filed with the Board a job description of the functions of a material control clerk. In that exhibit it was indicated that it took approximately one to three years for a novice to learn the job thoroughly. The grievor commenced this job in July 1973. It is our view that according a mere six months to learn the intricacies of the duties of that position was a rather unfair test of the grievor's capabilities. It is to be noted that the written memoranda prepared by Mr. Milne with respect to the grievor's progress at the job commenced in September, 1973, a month and a half after the grievor was made a material control clerk. We find that the conclusion can be made, having regard to the cumulative effect of the instructions of the respondent to its supervisory staff to observe employees with respect to their union activity, the evidence of an anti-union animus be the respondent with respect to the complainant's organizational campaign, the rather short trial extended the grievor at the job of material control clerk, and the fact that the grievor did play a minor role in the complainant's organizational campaign, that the grievor was discharged for his union activity.

22. The Board directs that the respondent forthwith reinstate Fred Radziwolek in the same position or a like position thereto as he held at the date of his termination effective from the date of discharge, with full compensation for all earnings lost by reason of the discharge. If the parties are unable to agree as to the amount of loss of earnings of Mr. Radziwolek, between the date of his discharge and the date of his reinstatement within 14 days hereof, the Board, at the request of either party, will give the parties an opportunity to present evidence and make submissions with respect thereto and the Board will then determine the amount of loss of earnings due.

DECISION OF BOARD MEMBER J. D. BELL: July 12, 1974.

I dissent.

However, in order to prevent further unreasonable delay and continuing liability, I will give my reasons for such dissent at a later date.

4658-73-R: International Association of Bridge, Structural and Ornamental Iron Workers Local Union 721 (Applicant) v. OVERHEAD DOOR CO. OF TORONTO LTD. (Respondent).

BEFORE: R. A. Furness, Vice-Chairman, and Board Members J. D. Bell and P. J. O'Keefe.

APPEARANCES AT THE HEARING: J. Tressider for the applicant; Keith Billings and Donald C. Warren for the respondent.

DECISION OF THE BOARD: July 17, 1974.

1. The Board has considered the representations of the parties with respect to the Report of the Examiner dated May 15, 1974.

2. The respondent is engaged in the sale, distribution, installation, maintenance and warranty of various types of wood and metal doors. The primary or predominant purpose of the respondent's business is the sale and distribution of overhead wood, steel, aluminum and fiberglass doors. Necessarily incidental to this primary purpose is the installation, maintenance and warranty work done in connection with the sale and distribution of overhead doors. During the first nine months of 1973, the respondent acquired, sold, and distributed wood door units and metal door units in a ratio of three to one. Approximately ninety per cent of all door units acquired, sold and distributed by the respondent are subsequently installed by the respondent.

3. In addition, the respondent is engaged in the maintenance of overhead doors. By way of a separate company operation, maintenance facilities are offered on a twenty-four hour day, seven day week basis to customers requesting maintenance of installed doors. Maintenance employees are engaged in the preventive maintenance of installed doors by inspecting, lubricating and replacing worn parts in accordance with a pre-arranged maintenance schedule entered into with the customer. The respondent is also responsible for the warranty work in connection with overhead doors manufactured by its principal supplier. This work involves the honouring of the guarantee on these overhead doors.

4. The applicant is seeking certification for a bargaining unit of ironworker finishers in the employ of the respondent in the Board's regular geographic area #8, save and except non-working foremen and persons above the rank of non-working foreman. The respondent adopts the position that the application should be dismissed on the basis that it has no employees falling within the unit claimed to be appropriate by the applicant. The respondent argued at the initial hearing of this application that the applicant was only entitled to have a bargaining unit determined under the provisions of section 6(2) of The Labour Relations Act and that, having regard to the employees affected by this application, there was not an appropriate bargaining unit to be determined under section 6(2). The respondent claimed that because the applicant was a craft trade union the Board could not in this application determine an appropriate bargaining unit under section 6(1) of The Labour Relations Act.

5. At the initial hearing the Board ruled that, in the event it determined a bargaining unit of employees appropriate for collective bargaining, such bargaining unit may not necessarily be determined under the provisions of section 6(2) of The Labour Relations Act; but may rather be determined under the provisions of section 6(1).

. . . .

7. The respondent's position was that in addition to these thirteen persons there were five other persons (four warehousemen and one electrician) employed by the respondent on the date of the making of the application who might be potentially eligible for inclusion in the bargaining unit. While the respondent conceded that these five employees do not normally go out to install overhead doors, they may assist on occasion if they were needed. The applicant, on the other hand, stated that it was not seeking to include these persons in the proposed bargaining unit because they were not normally employed outside the warehouse.

8. The report of the Examiner reveals that installers work with maintenance men and that installers work in the shop or go out on service calls if there is not installation work to do. The installation

work is sometimes performed on new construction projects and installers spend the majority of their time on job-sites. The installers are paid the same rate whether they work on job-sites or in the warehouse. Melvin Nietupske stated in evidence that there is no distinction between service and installation and the Board notes that Gerald Brinkman classified in paragraph six herein as a maintenance man is referred to in the report of the Examiner as a serviceman in service and repair work. Mr. Brinkman also refers to Mr. Nietupski as a serviceman and an installer.

9. When the evidence is considered as a whole it is quite clear that there is a considerable overlapping in the function and work performed by all of the respondent's field staff-installers, installation helper, maintenance men and maintenance helpers. It appears from the evidence that while the field staff spend most of their time in the field; the warehousemen and the electrician, inferentially, spend most of their time in the warehouse. Indeed, the field staff appear to do the necessary electrical work in the field.

10. The Board finds that the field staff share a community of interest separate and apart from the four warehousemen and the electrician. The respondent operates an integrated business of selling, installing and servicing doors. There is no evidence before the Board concerning the respondent's sales staff.

11. This application has been filed under the construction industry provisions of The Labour Relations Act. The term "construction industry" is defined in section 1(1)(f) of The Labour Relations Act as follows:

" 'construction industry' means the businesses that are engaged in constructing, altering, decorating, repairing or demolishing buildings, structures, roads, sewers, water or gas mains, pipe lines, tunnels, bridges, canals or other works at the site thereof".

12. The installation and repairing of the doors referred to in this application is, in our view, clearly within the definition of "construction industry" as defined in section 1(1)(f). Whether "maintenance" is to be considered as part of "construction industry" depends, in our opinion, on the type of "maintenance" being performed and on the context of a given employer's operations. For example, the operating engineers' craft bargaining unit as determined by the Board includes the concept of employees who operate certain equipment and employees who are primarily engaged in the repairing and maintaining of such equipment. In addition, the Board has on several occasions excluded maintenance employees as opposed to construction employees from bargaining units determined in the construction industry. See, for example, the Tops Marina Motor Hotel case, 64(3) CLLC ¶16,004.

13. The maintenance work performed at the job-site by the respondent's field staff is an integral part of its installation and repair services. Accordingly, the Board finds that the maintenance work performed by the respondent's field staff is an aspect of installation and repair work and is therefore within the definition of "construction industry" as defined in section 1(1)(f) of The Labour Relations Act. The Board accordingly finds that this application which relates to the respondent's field staff is an application for certification within the meaning of section 108 of The Labour Relations Act.

14. The applicant has described the employees affected by this application as "ironworker finishers" because this expression corresponds to its own internal nomenclature. The respondent contends that since it does not employ "ironworkers finishers" the application should be dismissed or, at the very least, there should be a notification to the field staff by their correct designation (installer, installer helper, maintenance man and maintenance helper) that they are affected by this application. In our view, the respondent's field staff may reasonably be taken to have received notice of this application. In the first place, the field staff use their own descriptions to describe their duties, and, in the second place, the applicant has filed evidence of membership of the type referred to at the hearing on behalf of eleven of the thirteen persons referred to in paragraph six herein. In addition, the work of the field staff involves elements of ironwork finishing.

15. Having regard to the foregoing, to the circumstances of this application and to the provisions of section 6(1) of The Labour Relations Act, the Board further finds that all employees of the respondent engaged in the installation, repairing, servicing and maintaining of doors in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman, constitute a unit of employees of the respondent appropriate for collective bargaining.

16. For the purposes of clarity the Board declares that the warehousemen and the electrician are not included in the bargaining unit.

. . . .

18. A certificate will issue to the applicant.

4171-73-R: The United Brotherhood of Carpenters and Joiners of America (Applicant) v. INDUSTRIAL-MINE INSTALLATIONS LIMITED, Deer-Mine Services Limited, IMI Underground Contractors Limited, Industrial & Mine Installa-

tions (Quebec) Limited and Algoma Maintenance & Services Limited (Respondents) v. Group of Employees (Objectors).

BEFORE: R. A. Furness, Vice-Chairman, and Board Members A. Main and F. W. Murray.

APPEARANCES AT THE HEARING: W. Dubinsky, William Sherman, and T. Cope appearing for the applicant. No one appeared for the respondent. No one appeared for the objectors.

DECISION OF THE BOARD: July 15, 1974.

1. The applicant initially applied for certification with respect to a respondent described as Industrial-Mine Installations Limited (hereinafter referred to as "Industrial-Mine"). In a response to this application the Board was informed by "the solicitors for the respondent" that the correct name of the respondent was Deer-Mine Services Limited (hereinafter referred to as "Deer-Mine").

2. In a letter to the Board, the applicant requested that Deer-Mine, I.M.I. Underground Contractors Limited (hereinafter referred to as "IMI Underground"), Industrial Mine Installations Quebec Limited (hereinafter referred to as "Industrial & Mine") and Algoma Maintenance and Service Limited (herein after referred to as "Algoma Maintenance") be added as respondents and that the respondents be declared to be associated companies pursuant to section 1(4) of The Labour Relations Act.

3. The names "Algoma Maintenance and Services Limited", "I.M.I. Underground Contractors Limited", and "Industrial Mine Installations Quebec Limited" requested by the applicant to be added as respondents to this application are amended to read: "Algoma Maintenance & Services Limited", "IMI Underground Contractors Limited", and "Industrial & Mine Installations (Quebec) Limited", respectively.

4. Having regard to the representations of the parties, the Board, pursuant to section 54 of the Board's Rules of Procedure, directed that IMI Underground Contractors Limited, Industrial & Mine Installations (Quebec) Limited, Algoma Maintenance & Services Limited and Deer-Mine Services Limited, be added as respondents to this proceeding.

5. The evidence at the hearing established that when the employees affected by this application were first hired they were informed that they were working for Industrial-Mine. On the date of the making of this application, the business representative of the applicant observed commercial vehicles at the job-site affected by this application which were painted red with the letters "IMI" on a white background.

6. The employees were paid by cheque for the period covering the date of the making of the application. The payor on these cheques was Deer-Mine. A few days after this application was filed, the name "IMI" on the vehicle at the job-site was painted over and obliterated with yellow paint.

7. The evidence before the Board also established that one of the vehicles referred to in paragraph five herein was at all material times registered in the name of IMI Underground and that another vehicle was registered in the name of Industrial Mining Installations Limited until shortly after the date this application was filed when it was registered in the name of Industrial-Mine.

8. Evidence was also introduced before the Board on the basis of information supplied under The Corporations Information Act, 1971, concerning the directors, officers, head office, mailing address and nature of undertaking of the five respondents. This evidence is more readily appreciated if it set forth in table form (see schedule "A").

9. The applicant also introduced evidence that Montague Reed negotiated and signed a collective agreement on behalf of Deer-Mine with the International Association of Bridge, Structural & Ornamental Iron Workers, Local Union 759 in October, 1973. The applicant introduced further evidence that in 1972 it was certified (with respect to a different geographic area) for bargaining units of carpenters and millwrights employed by Algoma Maintenance. Mr. Cope, a business representative of the applicant, testified that Montague Reed, John O'Donoghue (a solicitor), Jack Sheridan (project manager) and a Mr. S. M. Forsythe negotiated at the job site with respect to these two certificates. He gave evidence that Jack Sheridan was authorized to sign and did sign on behalf of Algoma Maintenance the collective agreements which resulted. The witness also gave evidence that Montague Reed participated in conciliation proceedings in Toronto on behalf of Algoma Maintenance.

10. In various correspondence to the Board S.M. Forsythe describes himself as office manager of all five respondents and refers to Messrs. Barlow, Peck and O'Donoghue as the solicitors for the five respondents. In addition, the correspondence to the Board indicates (1) that all five respondents have an address of "P.O. Box 59, Schomberg, Ontario"; (2) where provided, the telephone numbers of three of the respondents, Industrial-Mine, Industrial & Mine and IMI Underground, are the same; (3) the three respondents referred to in (2) have their administrative offices, yard and shops at the address referred to in (1); (4) the names of Industrial Mine and Industrial & Mine appear together on the same stationery under the prominent heading of "I.M.I."; (5) the name of IMI Underground appears on stationery under the same prominent heading referred to in (4); (6) the stationery referred to in (4) and (5) contains the same pictorial design and the same slogan contractors to

the Mining Industry", and (7) the various correspondence from Mr. Forsythe was mailed to the Board in the envelopes of Industrial-Mine.

11. From the representations of the parties it appears that Industrial-Mine and Deer-Mine were both at the relevant time engaged in construction work appurtenant to a mine on the date this application was filed.

12. The Board notes that in the Industrial-Mine Installations Limited and IMI Underground Contractors Limited case [1971] OLRB M. R. 712, the Board found that these two companies carried on associated or related activities or businesses and that these two companies were under common control or direction within the meaning of section 1(4) of The Labour Relations Act. In addition, two applications for certification (see the Board files #1757-71-R and 1758-71-R) filed by the applicant illustrate the confusion and uncertainty which exists even in the corporate minds of IMI Underground and Industrial & Mine. In these two applications for certification, the Board, after considering the representations of the respondents therein, issued a certificate to the applicant with respect to Industrial & Mine. Subsequently, the respondents discovered an error and advised the Board that in their view IMI Underground and not Industrial & Mine was the employer of the persons affected by the applications.

13. Section 1(4) of The Labour Relations Act states:

"Where, in the opinion of the Board, associated or related activities or businesses are carried on by or through more than one corporation, individual, firm, syndicate or association, or any combination thereof, under common control or direction, the Board may treat the corporations, individuals, firms, syndicates or associations or any combination thereof as constituting one employer for the purposes of this Act."

14. In our opinion, the respondents carry on the associated or related activities or businesses of mining construction. The second point to be considered is whether the respondents are under common control or direction. In the Walters Lithographic Company Limited case [1971] OLRB Rep. 406, the Board stated:

"The indicia or criteria which the Board considers relevant in making a determination as to whether the activities or businesses of one or more corporations, individuals, firms, syndicates or associations, or any

combinations thereof are carried on under common direction and control and therefore may be treated as one employer are - -

(1) common ownership or financial control,
 (2) common management, (3) interrelationship of operations, (4) representation to the public as a single integrated enterprise, and (5) centralized control of labour relations. No single criterion is likely to decide the issue.

15. With regard to the first criterion the Board notes that Montague Reed is a director of three of the respondents and that Iliff Peck is a director of two of the respondents. Mr. Reed and Mr. Peck are both directors of one of the respondents. However, the evidence with respect to this criteria does not, in our view, constitute evidence of common ownership or financial control with respect to the five respondents.

16. With respect to the second criterion the Board is satisfied that S. M. Forsythe is the office manager of all five respondents. Montague Reed is an officer of the same three respondents of which he is a director. Iliff Peck is an officer of two of the respondents including one of the respondents of which he is a director. In the light of the context of these facts, the Board finds that there is some evidence of common management with respect to all of the respondents.

17. Considering now the third criterion. All five respondents have a common postal address and it appears that at least three of the respondents have administrative offices yard and shops at this address. The Board finds that Industrial-Mine and Deer-Mine were both involved in working at the job-site affected by this application and that these two respondents were using equipment of IMI Underground. Similarly, the decision of the Board in the Industrial-Mine Installations Limited and IMI Underground Contractors Limited case supra, clearly establishes that Industrial-Mine and IMI Underground were both involved in mining construction at the same job-site. The Board finds that there is some evidence of an interrelationship of operations between Industrial-Mine, Deer-Mine, IMI Underground and Industrial & Mine.

18. The stationery referred to in paragraph ten herein is some evidence with respect to the fourth criterion that Industrial-Mine, Industrial & Mine and IMI Underground represent themselves to the public as a single integrated enterprise.

19. With respect to the fifth criterion, Montague Reed has negotiated and signed a collective agreement on behalf of Deer-Mine although he is apparently neither a director nor an officer of this respondent. Similarly, Montague Reed, although apparently neither a director nor an officer of

Algoma Maintenance has negotiated on its behalf with respect to two certificates issued to the applicant and participated in conciliation proceedings on its behalf. In addition, the office manager, Mr. S. M. Forsythe has negotiated with the applicant with respect to these two certificates issued to the applicant. In our view, this constitutes; when viewed in the context of Montague Reed's position as a director and officer of Industrial-Mine, IMI Underground and Industrial & Mine and Mr. M. S. Forsythe's position as office manager of all five respondents; clear evidence of some degree of centralized control of labour relations.

20. When the evidence before the Board is viewed in terms of four of the five criteria-referred to in paragraph fourteen herein, it may be argued that the precise nature of the relationship between the respondents might well be more sharply drawn. However, in our view, the evidence before the Board, when viewed as a whole, provides a sufficient basis for a finding by the Board that all five respondents carry on associated or related activities or businesses and that all five respondents are under common control or direction within the meaning of section 1(4) of The Labour Relations Act. The Board accordingly determines that the respondents herein be treated as one employer for the purposes of The Labour Relations Act.

. . .

27. A certificate will issue to the applicant.

5939-74-U: WHEELABRATOR CORPORATION OF CANADA LIMITED (Applicant) v. Frank Holburn (Respondent).

BEFORE: G.W. Adams, Vice-Chairman, and Board Members E. Boyer and F.W. Murray.

APPEARANCES AT THE HEARING: S.R. Ellis and J. Brassard for the applicant; Raymond Koskie and Frank Holburn for the respondent.

DECISION OF THE BOARD: July 22, 1974.

1. This is an application for a direction under section 123 of the Act.

2. The following is a concise statement of the nature of each act complained of:

- (a) The Applicant is engaged in installing at the plant premises at Atlas Steels Company (Atlas Steels) on Centre Street

at Wallace Avenue, in the City of Welland, a structural steel baghouse, which installation is for the purposes of cleaning gases and fumes from the furnaces of Atlas Steels.

- (b) The Applicant commenced the installation of the said baghouse on or about the 16th day of May, 1974 and the project is approximately three-quarters completed.
- (c) The installation work aforesaid has been carried out by eleven members of the Bridge, Structural and Ornamental Iron Workers, Local 736 (Iron Workers) who were hired by the Applicant for the purpose. The work has been carried out under the supervision of the Applicant's Field and Installation Superintendent.
- (d) On or about the 12th day of June, 1974 the Respondent Frank Holburn who is known to the Applicant as a business agent or other officer of a local chartered by the International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths and Helpers (the Boilermakers) went to the Applicant's Atlas Steels project and informed the Applicant's Field and Installation Superintendent that he would place a picket line at the project unless the Applicant hired members of the Boilermakers at the project in place of the Applicant's Iron Workers employees.
- (e) On or about Monday, June 17, 1974 a group of approximately twelve members of the Boilermakers arrived at the Applicant's Atlas Steels project and began to picket the project. Picketing continued on the 18th, 19th, 20th and 24th days of June, 1974.
- (f) Early in the morning of Monday, June 24, 1974 there were approximately 30 members of the Boilermakers picketing at the Applicant's Atlas Steels project. The pickets stretched themselves across the entrance to the Atlas

Steels project which was used by the Applicant to block it so that no person or vehicle could gain entrance.

- (g) The Applicant's Iron Workers employees arrived at the Atlas Steels project on June 24 at the scheduled reporting time and after observing the said pickets, they did not cross the picket line.
- (h) In order to avoid the possibility of violence, the Applicant's Manager did not order the Iron Workers employees to attempt to pass through to the crowd of pickets.
- (i) The Applicant says that the picketing of its Atlas Steels project was caused by the Respondent for the purpose of causing an unlawful strike of the Applicant's Iron Workers employees at the Applicant's Atlas Steels project.
- (j) The Applicant therefore says that the Respondent procured an unlawful strike of its employees who were members of the Iron Workers at the Atlas Steels project aforesaid.

3. At the outset of the hearing the respondent requested further particulars under Rule 47 of the Board's Rules of Procedure. More specifically, the respondent requested the exact time and location of the conversation referred to in paragraph (d) of the particulars; the exact time and location of the picketing referred to in paragraph (e); the names of both the persons and drivers of the vehicles referred to in paragraph (f); the facts suggesting that violence was possible as alleged in paragraph (h); more particulars in regard to the phrases "causing an unlawful strike" and "procured an unlawful strike" found in paragraphs (i) and (j).

4. Having regard to the applicant's admission that no persons or vehicles were deprived access to the plant and the applicant's agreement to delete paragraph (h), the Board ruled that the applicant's complaint was pleaded with sufficient particularity. Accordingly, neither Rule 47(3) nor Int'l Brotherhood of Electrical Workers, Local 120 v. Freeman Electric Limited case, OLRB M.R. Sept. 1972 p. 822, has any application.

. . .

6. The company, Wheelabrator Corporation of Canada Limited, is presently executing a contract with Atlas Steels Company. Atlas bought

a structural steel baghouse from Wheelabrator to handle air pollution and industrial fumes, and Wheelabrator is installing the device at the Atlas plant in Welland. Wheelabrator has a collective agreement with Local 736 of Bridge, Structural and Ornamental Iron Workers union in regard to its manufacturing operation but this agreement does not cover "on site" erection. However, Mr. John Brassard, Director of Manufacturing at Wheelabrator, testified that iron workers were used for such activity and iron workers from Local 736 were employed to erect the baghouse at the Atlas plant. The work commenced on April 30, 1974, and it is projected to be finished by August 15, 1974.

7. From the evidence of Mr. Harold Lovell, Segeant of Security at Atlas, and Mr. Charles Belanger, the Wheelabrator Superintendent on the Atlas project, the following facts were established. Some eight to ten days before June 24, 1974, Mr. Frank Holburn attended the security office of the Atlas plant in Welland. He identified himself to Mr. Lovell as a representative of the Int'l Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, and asked to see the foreman of "the Wheelabrator job". He was refused access to the site but Mr. Belanger was contacted and he came out to speak with Mr. Holburn. According to the uncontradicted evidence of Mr. Belanger, Mr. Holburn asked to see the project and when told to telephone Mr. Belanger's employer he said he would see the top man of Atlas about getting in to view the site and if he was refused access "there was going to be a picket line".

8. From Mr. Belanger's evidence the Board is satisfied that the applicant has established, at least in a prima facie manner, that Mr. Holburn is an official of the Boilermakers trade union in the Niagara Peninsula. Admittedly the exact local of the trade union and his exact position within the trade union structure was not clearly identified, but this kind of specificity is unnecessary given the facts at hand. Moreover, Mr. Holburn chose not to present any evidence in this regard, although he had the opportunity to clarify or to deny his relationship with the trade union.

9. The evidence further establishes that on Monday June 17, 1974, a group of individuals formed picket lines outside the Atlas plant at the intersection of Centre and Harold Streets in the City of Welland, and at the intersection of Wallace and Major Streets. Many of the people forming these picket lines carried placards reading "Wheelabrator unfair to Boilermakers" and Mr. Belanger testified that he recognized at least three of the people as individuals who had worked for him two years earlier and who at that time were members of the Boilermakers trade union or at least carried "a slip" from that trade union at that time. Moreover one of these people told Belanger that the Wheelabrator employees were doing "Boilermaker's work". But he could not remember the names of any of these individuals. The evidence supports that similar picket

lines were established on Wednesday, June 15, 1974, and Monday, June 24, 1974. But everyone who was scheduled to work reported at the Atlas plant on every day other than June 24, 1974. On that day, the Wheelabrator employees gathered at a restaurant within the view of the picket line at Wallace and Major Streets. The people on the lines were speaking to the occupants of each of the cars as they entered the plant's parking lot. One of the Wheelabrator employees went over to speak with individuals on the picket line and when he returned and spoke to his fellow employees, Mr. Belanger was told that everyone was going home. He then reported to his employer that there was a picket and everybody went home. From the fact that Mr. Belanger came to work on that Monday and met with his employees at the restaurant before going into the plant gate, as was the custom, the Board can infer that work was scheduled for all Wheelabrator employees on that day. Moreover, in light of the industrial realities the Board can rightly take further notice that the men went home because of the picket line - they either chose to honour it or were frightened by it, or some combination of each of these motivations. (See Smith Bros. Const. v. Jones [1955] 4 D.L.R. 255 at 264.) Furthermore, having regard to Mr. Holburn's status in the Boilermakers trade union and his threat to Mr. Belanger; the existence of individuals on a picket line outside the Atlas plant; the fact that the placards carried by these individuals read "Wheelabrator unfair to Boilermakers"; and the fact that at least three of these individuals were recognized by Mr. Belanger as "connected with" the Boilermakers trade union in the Niagara Peninsula area (apparently Mr. Holburn's area of responsibility), at least two years ago, the Board finds that sufficient circumstantial evidence has been adduced by the applicant to establish a relationship between Mr. Holburn and the existence of the picket line. The totality of this evidence substantially distinguishes this case from the facts found in Noront Steel Limited OLRB M.R. March 1974 p. 188.

10. Section 123(1) reads:

Where on the complaint of an interested person, trade union, council of trade unions or employers' organization the Board is satisfied that a trade union or council of trade unions called or authorized or threatened to call or authorize an unlawful strike or that an officer, official or agent of a trade union or council of trade unions counselled or procured or supported or encouraged an unlawful strike or threatened an unlawful strike, or that employees engaged in or threatened to engage in an unlawful strike, it may direct what action if any a person, employee, employer, employer's organization, trade union or council of trade

unions and their officers, officials or agents shall do or refrain from doing with respect to the unlawful strike or the threat of an unlawful strike.

11. Has Mr. Holburn, as an official or agent of a trade union, "counselled or procured or supported or encouraged an unlawful strike" or aided or threatened an unlawful strike? We find that his actions procured or encouraged an unlawful strike of Wheelabrator employees. Our reasoning now follows.

12. Section 1(1)(m) of the Act defines strike in the following terms:

"strike" includes a cessation of work, a refusal to work or to combination or in concert or in accordance with a common understanding, or a slow-down or other concerted activity on the part of employees designed to restrict or limit output.

The Wheelabrator employees ceased or refused to work or refused to continue to work in combination or in concert. No one went in to work on Monday, June 24, 1974, yet everyone had arrived at the restaurant before signing in. After one of them, a man named Dugay, spoke with individuals on the picket line, all of the Wheelabrator employees went home despite the fact that work must have been available for them to do. Why else would they have assembled at the restaurant? Moreover, if there was no work to perform it would have been unnecessary for Belanger to phone his employer and tell him that the men had gone home. The words "designed to restrict or limit output" constitute a phrase modifying "a slow-down or other concerted activity" and do not refer to refusals to work or to continue to work. This is evident from both the grammatical structure of the definition and the need to constrain the impact of a prohibition directed at such broad words as "a slow-down or other concerted activity". There is no similar need to constrain absolute work stoppages because their inevitable result is to restrict or limit output. This inevitability colours and crystallizes the intention of anyone so engaged in a work stoppage. Therefore the Wheelabrator employees, in not working on Monday, June 24, 1974, engaged in a strike. This case is distinguished from Smith Bros. Const. v. Jones [1955] 4 D.L.R. p. 255, where at p. 260 McLennan J. declined to find that fact that employees of the plaintiff company did not work at a site during a period of time constituted a strike within the definition found in The Labour Relations Act. In that case, because not all or nearly all of the plaintiff's workmen ceased or refused to work, McLennan J. found that there was no evidence that the employees

of the plaintiff acted in concert where the pickets were placed. In the facts at hand, all the employees declined to report for work supporting a Board inference that the refusal to work was concerted activity. Similarly, there are more accompanying facts in this case to suggest that their refusal to work was a breach of contract on their part than existed in either Gagnon v. Foundation Maritime Ltd. (1961) 28 D.L.R. (2d) 174 at p. 180, or Freelance Erectors Limited v. Patrick Doyle and Int'l Association of Bridge, Structural and Ornamental Ironworkers, Local Union No. 700 v. Labourers' Int'l Union of North America OLRB M.R. September 1972 p. 818. Finally, while the decision of the New Brunswick Supreme Court in Furness Withy and Co. Ltd. (1974 - unreported) appears to have held that honouring a picket line does not constitute a strike under the Canada Labour Code, we would note that the court emphasized that the picket lines in that case arose out of collective bargaining activity and that the employees respected "legal picket lines". These are not the facts before this Board.

13. But section 123 requires that the strike be characterized as unlawful. In this regard section 63(2) of the Act reads:

63.-(2) Where no collective agreement is in operation, no employee shall strike and no employer shall lock out an employee until the Minister has appointed a conciliation officer or a mediator under this Act and,

- (a) seven days have elapsed after the Minister has released to the parties the report of a conciliation board or mediator; or
- (b) fourteen days have elapsed after the Minister has released to the parties a notice that he does not consider it advisable to appoint a conciliation board,

as the case may be.

In the facts at hand, no collective agreement was in operation and none of the conditions in section 63(2) had been met. Accordingly, the strike was in violation of this section and therefore unlawful within the meaning of section 123.

14. Mr. Koskie argued that even if the pickets could be linked to Mr. Holburn it cannot be said or should not be said that the picket

line procured or encouraged the unlawful strike. It was his position that picketing is a common law right by which individuals express their freedom of speech. Accordingly, any legislative constraint should be express and a total constraint or bar might well be ultra vires a provincial government.

15. Having regard to the industrial relations realities in the construction industry as the background to section 123, the Board finds that its wording is sufficiently express to prohibit picketing that brings about an unlawful strike, at least in these circumstances. The admonition to be cautious in this area found in Canadian Davies Ltd. [1940] 4 D.L.R. 725 was premised upon no other wrongful act being present. The enactment of section 123 creates a very different context within which picketing is to be viewed. This was noted by the Board in North Simcoe Electrical Contracting Limited case OLRB M.R. June 1973 p. 338, where it was stated:

Thirdly, we do not propose a wholesale adoption of the techniques and reasoning exercised by the courts in resolving tort or criminal problems that arise in labour situations. Traditional reasoning based and founded in a pre-collective bargaining era, in our view, is unwieldy a viable and realistic labour relations policy; see generally, Arthurs; Tort Liability for Strikes in Canada [1960] 38 Can. Bar Rev. 346 Weiler: The 'Slippery Slope' of Judicial Intervention [1971] Osgoode Hall Law Journal; Bickel and Wellington: Legislation Purpose and the Judicial Process [1957-58] 71 Harv. L. Rev. 1 at 24-25. In so saying we do not reject the interests which have been protected by the courts, but rather we view those interests as being a part of a larger spectrum of interests worthy of protection in developing a policy of labour relations. Nor do we reject the result arrived at by the courts in many of the cases that have come before them - this withstanding that both our starting point and our focus are different.

For these reasons cases similar to Cummings v. Hydro-Electric Power Commission of Ontario, [1966] 1 O.R. 605; S.C.M. (Canada) Ltd. v. Motley [1967] 2 O.R. 323; Gossard v. Tripp [1968] 1 O.R. 230; Canadian Tire Corporation v. Desmond [1972] 2 O.R. 60 which are all either interim or interlocutory applications for injunctive relief, are not determinative of the Board's deliberations. What must be emphasized

in the facts at hand is that the picketing did not arise out of lawful collective bargaining. In fact its existence is more related to concerted activity to gain recognition which is clearly prohibited by the Act. And to the extent that freedom of speech and a desire to communicate to the public is involved in such picketing, section 123 draws constitutional support from the holding of Koss v. Konn (1961) 30 D.L.R. (2d) 242. But this is not to say that the Board disagrees with the proposition articulated in this area by Mr. Justice Berger in Attorney General of Canada v. General Truck Drivers and Helpers Union 73 CLLC 14,832 where he stated:

Nevertheless, I think that this Court must be vigilant to see that the right of these men to bring their grievance to the attention of the public is not impaired.

But the statement is a most difficult one to apply in this industrial relations context. Can it be said that Frank Holburn was trying to inform the public by way of this picketing, and where the "public" is a group employees who respond by engaging in an unlawful strike, can it be said that only freedom of speech is involved, and that section 123 does not apply. We think not. For all of these reasons the Board is prepared to issue a cease and desist order in these circumstances. But in doing so the Board can do no better than reproduce the excerpt from North Simcoe Electrical Contracting Limited case, supra, that describes the nature of the Board's approach in these cases:

The absence of a statutory codification setting out the basis for granting cease and desist orders makes our role in applying section 123 a highly creating one. Therefore in balancing the various interests of management, unions, employees, and the public and in deciding which tactics should be prohibited and which should be permitted requires a flexible and pragmatic approach to the issues which have been raised, and which will be raised before this Board. We recognize that to restrict or permit the objectives or the forms of economic pressure may tip the scales towards management or the union in any particular situation. It is therefore necessary that our earlier decisions at the very least should not be to doctrinaire, and to a great extent each case should depend upon its own particular facts. Principles, if any, are to be evolved over a long period on a case by case analysis. Initially, therefore,

we should hesitate to paint a wide brush or pronounce unduly on matters as they arise. Such caution must not be misinterpreted - it is only a recognition of the grave responsibility granted to us and a recognition of the difficulties in maintaining a balance among the interests which compete for our decision.

16. Accordingly, with no further attempt to generalize its ruling, the Board directs the respondent, his agents, representatives, any one acting on his behalf or under his instructions from:

- (i) picketing, watching or besetting or attempting to picket, watch or beset at or adjacent to the premises of Atlas Steels Company in the City of Welland, or at or adjacent to the Streets or other roads leading thereto, and,
- (ii) procuring or encouraging a strike of members of Bridge, Structural and Ornamental Iron Workers, Local 736 employed by Wheelabrator Corporation of Canada Limited at the said project with the view, purpose, motive or intention of provoking members of the Iron Workers employed by Wheelabrator at the project to cease performing the work in dispute which has been assigned to them.
- (iii) ordering, aiding, abetting, counselling, performing or encouraging in any manner whatsoever with directly or indirectly any person to commit the acts aforementioned.

17. Board Member, E. Boyer, will issue a separate addendum at a later time.

5895-74-R: Ottawa Newspaper Guild, Local 205, the Newspaper Guild (Applicant) v. The Journal Publishing Company of Ottawa, Limited (Respondent).

RE: THE OTTAWA JOURNAL PUBLISHING CO.

BEFORE: D. H. Kates, Vice-Chairman, and Board Members O. Hodges and F. W. Murray.

APPEARANCES AT THE HEARING: J. Sack and W. McLenan for the applicant; C. G. Riggs and J. A. Hamilton for the respondent.

DECISION OF D. H. KATES, VICE-CHAIRMAN AND BOARD MEMBER F. W. MURRAY: July 24, 1974.

. . .

2. This is an application for certification for a group of the respondent's employees engaged in its circulation department.

3. The Board at the outset of the hearing heard representations of counsel with respect to amending the applicant's name to read "Local 205" in lieu of "Local 203". Having regard to the nature of the discrepancy to be that of a typographical error, the Board in the exercise of our discretion under section 93 directs that the name be amended accordingly.

. . .

5. The Board during the course of the proceedings pointed out to the parties that the twenty membership cards filed by the applicant did not indicate in the space provided for said purpose the name of the applicant local. Indeed all the spaces reserved for the specific insertion of the local number were left blank. The undersigned in each case in accordance with the text of the membership card asserts:

I designate The Newspaper Guild and its Local my agent in collective bargaining, and authorize The Newspaper Guild and its Local to represent me before any Board, Court, Committee or other Tribunal in any matter involving collective bargaining, and I authorize The Newspaper Guild and its Local to represent me in adjusting any grievances I may have in connection with my employment. I pledge myself to abide by the constitution of The Newspaper Guild and the By-Laws of the Local Guild.

6. It appears on the face of the documents filed with this Board that there may be some doubt as to whether the signatories of these membership cards were cognizant of the organization that they were in the process of joining. The amended application for certification form indicates that the applicant trade union is Local 205, and, on

the face of the membership cards, the applicants appear to be indicating membership in the international parent. It may be arguable that the local union designated in the preamble of these application for membership cards filed in support of this application was local 205 of The Ottawa Newspaper Guild. On the other hand, assuming bit without finding that the oral evidence adduced at the hearing is admissible for purposes of identifying and substantiating these documents, this Board may equally arrive at the conclusion, having regard to the totality of evidence before us, that these documents indicate membership in "local 213 or 203", or indeed in the parent international.

7. The Board, having regard to its long standing policy of requiring applicants for certification to be most circumspect in the quality of the evidence of representation filed in support of an application for certification, cannot give credence to the membership documents filed herein.

8. The application is therefore dismissed.

DECISION OF BOARD MEMBER OLIVER HODGES: July 24, 1974.

1. On the face of the membership cards it is clear that the applicant employees have designated "The Newspaper Guild and its Local" as their bargaining agent. The application was made by a Local of The Newspaper Guild. Section 7(1) of the Labour Relations Act is as follows:

"Upon an application for certification, the Board shall ascertain the number of employees in the bargaining unit at the time the application was made and the number of employees in the unit who were members of the trade union at such time as is determined under clause j of subsection 2 of section 92".

The Board must be satisfied that the employee applicants "were members of the trade Union". The style of the declaration on these membership cards is such that authorization is given to both the parent trade union together with its local, whatever local that may be. The applicant employees joined "the trade union", in this case Local 205 of The Newspaper Guild.

2. In paragraph 5 the majority assume that a space in the body of the card is for the insertion of the name of the applicant local. Since there was no evidence adduced with reference to the purpose of that particular space in the card, it is also possible that the space is for another purpose. Indeed it is my view that the space in question

is for the purpose of designating the local of which the person who signed up the applicant employee is a member, and not for the purpose of designating the applicant local. Since there are no other spaces on the card where a local number could be inserted, it is clear to me that Local 205 of The Newspaper Guild is the applicant local of which the employees became members when they signed the membership card.

3. Assuming but without finding that the oral evidence adduced at the hearing is admissible for the purpose of satisfying and substantiating these documents, my clear understanding of the testimony given by the Vice-President of Local 205 who signed up 19 of the twenty employee members is that all of those persons were specifically told they were joining Local 205, and that this fact was conveyed in a conversation which also detailed the benefits of such membership. I am not at all in doubt as the majority are in paragraph 6; the testimony of both witnesses made clear to me that the employee applicants were not members of Local 213 or of the International Union, nor could these employees have considered themselves members of Local 213 or of the International parent alone. However, I do not rely on such evidence to reach my decision.

4. Considering all of the evidence and in the circumstances of this case, and since to my knowledge there is no prior case on all fours with the facts of this case, I find the applicant certifiable on the membership evidence before the Board.

5. Notwithstanding my finding, I am impelled to add that the applicant local union was at least thoughtless in framing this application. Had the application been made in the name of The Newspaper Guild, without naming the local union, a finding for certification on the membership evidence before the Board may well have followed.

5707-74-R: Fred Upshaw (Applicant) v. International Chemical Workers Union, Local 688 (Respondent).

RE: REDPATH SUGARS LTD.

BEFORE: D.E. Franks, Vice-Chairman, and Board Members J.D. Bell and P.J. O'Keeffe.

APPEARANCES AT THE HEARING: Robin B. Cumine and Fred Upshaw for the applicant; S.T. Goudge, Robert Lewis, Ian Roland and Dennis Phillips for the respondent.

DECISION OF THE BOARD: July 24, 1974.

1. This is an application for termination of bargaining rights. The applicant herein filed with its application a petition in order to establish its claim under section 49 of the Act that a majority of the employees have voluntarily signified that they no longer wish to be represented by the respondent trade union. The respondent trade union has filed with the Board a counter petition in accordance with the procedure set out in Form 15 of the Board's Rules of Procedure. If the Board were to give weight to the counter petition the effect of the counter petition would reduce the number of employees who have voluntarily signified that they want the bargaining rights of the respondent terminated to less than fifty per cent. It is, therefore, necessary for the Board to determine whether that counter petition signifies the voluntary wishes of those employees who signed that document.

2. The counter petition contains the names of 73 employees. At the hearing in this matter the Board heard from a number of witnesses who at one time or another had possession of the document submitted to the Board. The evidence is clear that the counter petition originated with Mr. Dennis Phillips, who is the President of the respondent trade union. The counter petition was passed from Mr. Phillips to a number of other employees. These employees either transferred the counter petition to another employee or participated in the circulation of the counter petition, and in such cases they frequently signed as witness to the signature of the individual employee who signed the counter petition. The Board is satisfied that the counter petition was continuously in the hands of the employees who gave evidence with respect to the counter petition and that at no time prior to its delivery at the offices of the solicitor for the respondent was the counter petition in the hands of the employer or any representative of the employer. Although the counter petition was circulated during working hours and throughout the various parts of the employer's operation, we are satisfied on the basis of the evidence presented to the Board that the counter petition was not circulated with the consent or the open knowledge of the employer nor did it appear to the employees that the employer was supporting the faction circulating the counter petition over the faction circulating the original petition filed in the present case.

3. The applicant has made certain charges with respect to the circulation of the counter petition. The Charges are:

- 1) In the instance of one employee a foreman was present in the room when he signed the counter petition; and,
- 2) Certain submissions made to employees who signed the counter petition were

coercive in nature and thus do not signify voluntarily that the employees wished to continue to be represented by the respondent trade union.

4. With respect to the first of these charges the evidence by the employee was that a foreman was in the room when he entered the control room where Mr. Dennis Phillips works. However, the employee was not certain that the foreman was still present when Mr. Dennis Phillips presented him with the counter petition. Dennis Phillips, on the other hand, was quite clear that he had waited until the foreman had left the room before showing the employee the counter petition. In these circumstances, we are of the view that this incident does not, as alleged by the applicant, indicate the employer's support or participation in the circulation of the counter petition.

5. There were also several incidents in which employees it is alleged were coerced into signing the counter petition. The alleged coercive statements appear to have been of two types. On the one hand it is alleged that certain employees were told that if the other union got in it would take a year before they had a collective agreement. It is alleged that others were told that if the other union got in the initiation fee for that union would be \$50.00. We find it difficult to characterize such statements as coercive particularly in the context of rivalry between two unions such as the facts in the present case clearly indicate. Such statements can only be viewed as coercive if we assume that employees are incapable of evaluating such claims when they are made, and we are not prepared to take the view that employees are incapable of evaluating such statements. We are therefore of the view that such statements would not be threatening or coercive to any of the employees to whom they were made and consequently this allegation does not affect the voluntary nature of the counter petition.

6. In the course of the evidence of the circulation of the counter petition there arose two conflicts in the evidence presented to the Board. With respect to one of these conflicts the person who signed the counter petition stated that he was in the control room with Mr. Dennis Phillips when he signed the counter petition. On the other hand the person witnessing his signature on the counter petition is Mr. John Shea who works in the laboratory next to the control room. The applicant suggests that this destroys the credibility of both Mr. Dennis Phillips and Mr. John Shea. It is, however, clear from the evidence in the present case that the control room and the laboratory are adjacent and connected by a window through which things are passed from one room to the other. It is our view of the evidence that very little distinction between the two rooms is made by those who normally work there because of this window, and that Mr. Shea could quite easily have witnessed the signing from the other room and accordingly signed

as witness to the signature. In this regard we cannot accept the contention of the applicant that this amounts to a conflict in the evidence of Mr. Shea and Mr. Dennis Phillips.

7. It was also suggested that there was a serious conflict in the evidence of Mrs. Pamela Gobey and that of another employee. It is clear that these two employees were proponents of the two different factions circulating the petition and the counter petition at the time. The inconsistencies appear to have occurred on a number of occasions in one day at the plant. The allegation of the applicant is that in the course of this debate Mrs. Gobey attempted to coerce the employee by threatening that his job would be done away with if the other union got in. We find it difficult to accept that such statements in the context of a prolonged discussion between two strong opponents of such opposing views, can amount to coercion and there is no evidence that such statements were made to any other employees.

8. For all the foregoing reasons we are satisfied that the counter petition does represent the voluntary wishes of those employees who have signed it signifying that they wish to continue to be represented by the respondent trade union.

9. The applicant in the present case has further raised an objection to the counter petition filed with the Board. The counter petition was mailed registered prior to the terminal date in the present application. However, the document so filed was a photocopy of the original. The original was kept in the solicitor's office and it was filed with the Board at the commencement of the hearing. We have examined both the photocopy and the original document and there is no discrepancy between the two documents. The respondent has asked the Board to accept these documents as properly filed within the meaning of section 48(2) of the Board's Rules of Procedure. The Board has in a previous case expressed its reluctance as well as some of the difficulties attendant in accepting photocopy evidence of membership in a trade union. However, in the present case we are of the view that the filing of the original document at the hearing cures any possible defect in the photocopy evidence which was filed within the time set out in section 48 of the Board's Rules of Procedure. Accordingly, we are reluctant to dismiss the counter petition on such a technical ground. The request of the respondent that the Board accept the evidence of the counter petition is therefore accepted.

10. In view of the foregoing reasons the applicant has not established that more than fifty per cent of the employees in the bargaining unit in the collective agreement between the respondent and Redpath Sugars Limited have voluntarily signified in writing that they no longer wish to be represented by the respondent on May 30, 1974, the terminal date fixed for this application and the date which the Board determines, under section 92(2)(j) of The Labour Relations Act, to be the time

for the purpose of ascertaining whether employees have voluntarily signified that they no longer wish to be represented by a trade union under section 49(2) of the said Act.

11. The application is therefore dismissed.

6022-74-U: QUEBEC HARDWOODS INCORPORATED, (FORMERLY CANADIAN HARDWOODS LIMITED) (Applicant) v. United Brotherhood of Carpenters and Joiners of America, Local Union 2759 (Respondent).

BEFORE: Frank V. Boscariol, Vice-Chairman, and Board Members J. D. Bell and P. J. O'Keefe.

APPEARANCES AT THE HEARING: F. R. von Veh and D. L. Nash for the applicant; P. Cavalluzzo, C. Robidas and T. Harkness for the respondent.

DECISION OF VICE-CHAIRMAN FRANK V. BOSCARIOL AND BOARD MEMBER J. D. BELL: July 29, 1974.

. . .

2. This is an application for a declaration that the respondent trade union called or authorized an unlawful strike.

3. The evidence as adduced at the hearing of this matter on July 19, 1974, discloses that the parties on May 17, 1972, entered into a collective agreement which was to terminate on March 31, 1974. Following timely notice to bargain for renewal of the said collective agreement, the parties met at various meetings in April for purposes of effecting a new collective agreement. A conciliation officer from the Ministry of Labour was subsequently appointed in this matter and he met with the parties on June 11. On agreement of counsel, there was filed with this Board, a letter addressed to the respondent from the Deputy Minister dated June 19, 1974 (Exhibit #3), advising that the Minister had decided not to appoint a Board of Conciliation in reference to the dispute.

4. The evidence further establishes that despite the warnings of David Rioux, the applicant's foreman, to Christian Robidas, the president of the respondent union that any strike action on the part of the employees prior to midnight of July 5, would be illegal, the employees did in fact commence a strike at the respondent's premises shortly after midnight of July 4. It is clear that at this time, Robidas was acting under the advice of Tom Harkness, the International Representative wherein he was assured that a strike conducted on July 4 would be legal according to the Minister's "No Board Report" letter received by the respondent.

5. The testimony of Robidas is to the effect that in computing the 16 day period (e.g. a combination of the time limits as set forth in Sections 63(2)(b) and 102(3)(a) of the Act), he had included the date appearing on the face of the said letter, viz. June 19. He stated that Harkness verified to him that accordingly the 16 day limit would have expired on July 5 such that lawful strike action could commence at any time after midnight of July 4.

6. Counsel for the respondent put to the Board various alternative arguments in defence to this application. Firstly, he argued that an essential ingredient of the alleged offence had not been proven, that is to say, that the applicant had failed to prove the date upon which the said "No Board Report" letter had been mailed. In this regard, counsel drew our attention to the relevant provisions of Section 102(3)(a) which provides that:

"A decision, determination, report, interim order, order, direction, declaration or ruling of the Board, a notice from the Minister that he does not consider it advisable to appoint a conciliation board, a notice from the Minister of a report of a conciliation board or of a mediator, or a decision of an arbitrator or of an arbitration board,

if sent by mail to the person, employers' organization, trade union or council of trade unions concerned addressed to him or it at his or its last-known address, shall be deemed to have been released on the second day after the day on which it was so mailed;"

(emphasis added)

It is counsel's submission that before this statutory presumption can come into effect, the date of mailing of this notice must be adduced in evidence either through the direct testimony of the Minister himself or through a designated person within the Ministry responsible for such mailing. In this regard, counsel referred to the specific provisions of section 100(4) of the Act which exempts the various Ministry officials from court or other tribunal proceedings. It is counsel's submission that this exemption is limited to critical information obtained and disclosed during the course of conciliation proceedings.

7. It cannot be disputed that it has been the consistent practice of this Board, in the absence of any direct evidence to the contrary, to treat the date appearing upon the face of the said "No Board Report"

letter as "the day on which it was so mailed". Without any allegations or evidence indicating that the date of mailing had occurred at some other time, we are satisfied with the sufficiency of the evidence as adduced on this point without requiring (even assuming that the applicant had the authority to do so) the applicant to "trace" such date of mailing in the manner as suggested to us by counsel for the respondent.

8. The second objection raised by counsel, assuming that we find that notice was properly mailed on June 19, related to the exclusion of that day from the relevant computations in determining the 16 day period. It is urged upon us that we adopt Robidas' calculations and include the June 19 date, the result of which, of course, would be to place the respondent in a legal strike position immediately after midnight of July 4. In our opinion, such an interpretation would do violence to the Board's normal practice (which consistent with the provisions of Rule 175 of the Rules of Practice of the Supreme Court of Ontario), in the ascertainment of time limits, is to exclude the first day but to include the last day in such computation. We find no justification for changing such a practice in these circumstances and accordingly we reject counsel's submissions in this regard.

9. Having regard therefore to the totality of the evidence as adduced, we are satisfied that the employees did engage in an unlawful strike on July 5, 1974, contrary to the provisions of Section 63(2)(b) of the Act.

10. Counsel's next submission related generally to the discretion vested in this Board with respect to declarations issued pursuant to the provisions of Section 82 of the Act. In this regard, he argued that the employees had both a bona fide and reasonable belief that their activities as engaged in immediately after midnight July 4, were lawful. In particular, he asked us to note that we are dealing in the instant case with laymen and not lawyers. He summarized some of the factors that the Board has in the past taken into consideration regarding its discretion not to issue a declaration. These included such situations as where the employees refused to work overtime on the basis of a bona fide interpretation of the collective agreement; where the union actively sought to persuade the employees to return to work; where it was not clear at the time of the strike whether or not there was a collective agreement in effect, where the employees were of the bona fide opinion that working conditions were unsafe and where there was employer provocation. (For specific examples, see, respectively; the John Inglis Co. Limited case 53 CLLC ¶ 17,049; the Wood-Mosaic Limited of Woodstock, Ontario case 56 CLLC ¶ 18,044; the General Motors of Canada, Limited case 55 CLLC ¶ 18,019; the Romat Ornamental Iron Ltd. case OLRB M.R. July, 1969, p. 528 and the pronouncements of the Board as set forth in the Dominion Glass Company Limited Case [1971] OLRB M.R. 354 at page 355 and The Toronto Western Hospital case [1972] OLRB M.R. 731 at page 737).

11. Having carefully reviewed these representations we find the cases cited to us are already distinguishable from the facts presented before us in the instant application where the applicant specifically pointed out to the trade union that its interpretation of the relevant legislation was in error. In our opinion, the initiation of strike action (as in the case of a lock-out is a serious matter and not an activity to be entered upon lightly. In this regard, the Legislature has seen fit to provide certain statutory pre-requisites and to which the parties are expected to rely upon in assessing their labour relations positions. Although we agree with counsel that this Board is generally faced with interpretations made by laymen rather than lawyers, it is clear that in the instant case, the opinion emanated from an International Representative relatively skilled and experienced in matters coming before this Board. Simply stated, we find that Mr. Harkness erred in his interpretation of the relevant legislation and we are not disposed, in the particular circumstances of this case, to relieve the respondent trade union from the statutory results flowing from the employees' subsequent unlawful activities.

12. Counsel for the respondent alluded to other matters which the Board should consider in these proceedings. In this regard he asked us to note that although the employees have not returned to work they were in fact as of the date of this application and as of the date of hearing, engaged in a legal strike. He argued therefore that the situation was analogous to the case where the employees had returned to work as of the date of the hearing, where in the absence of evidence disclosing a prior pattern of illegal behaviour and where the employer has no reasonable fear of future similar interruptions in his operations, the Board would decline to issue the declaration. (In this regard, see the Ball Brothers Ltd. case (1957) CCH Canadian Labour Law Reporter, Transfer Binder, '55-'59 ¶16,091 C.L.C. 76-576). As a final submission, counsel for the respondent argued that, in any event, there were alternative legal remedies available to the applicant.

13. In our opinion, both of these submissions have been exhaustively dealt with in the Quigley Construction Company Limited case, OLRB M.R. May 1972, p. 526 where, as in the instant case, a declaration was sought against the trade union in circumstances not entirely dissimilar to those presently before us. For the reasons as set out in that case, we accordingly reject the latter submissions as presented by counsel in this regard.

14. Accordingly, pursuant to the provisions of Section 82 of the Act, the Board declares that the respondent, United Brotherhood of Carpenters and Joiners of America, Local Union 2759, did call or authorize an unlawful strike against the applicant on July 5, 1974.

DECISION OF BOARD MEMBER P. J. O'KEEFFE: July 29, 1974.

1. Having regard to the evidence in this matter I find that the respondent did engage in a strike on July 5, 1974, contrary to the provisions of Section 63(2)(b) of the Ontario Labour Relations Act.
2. The evidence clearly establishes that the strike took place one day earlier than legally permissible because of a faulty computation in determining the legal strike date. Having regard to the totality of the evidence in this matter leading to the advice from Thomas Harkness, International Representative of the respondent, with regard to the July 5th date instead of July 6th, I am satisfied that the mistake in dates was entirely innocent and in fact the computation that was used to determine the faulty date was understandable and in fact such computation was a common sense layman's computation. However, we are here concerned only with the strict legal computation and as a result we have to find that the respondent was legally wrong in such interpretation.
3. In view of the foregoing and having regard to the discretion vested in the Board under Section 82 of the Act, I would use such discretion in not making a declaration that the strike engaged in by the respondent on July 5, 1974, was illegal. I would dismiss this application.

ONTARIO LABOUR RELATIONS BOARD REPORTS

A MONTHLY SERIES OF DECISIONS FROM THE

ONTARIO LABOUR RELATIONS BOARD

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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING JULY 1974

BARGAINING AGENTS CERTIFIED DURING JULY

No Vote Conducted

4171-73-R: The United Brotherhood of Carpenters and Joiners of America (Applicant) v. Industrial-Mine Installations Limited, Deer-Mine Services Limited, IMI Underground Contractors Limited, Industrial & Mine Installations (Quebec) Limited and Algoma Maintenance & Services Limited (Respondents) v. Group of Employees (Objectors).

Unit: "all carpenters, carpenters' apprentices and construction labourers in the employ of the respondents in the District of Thunder Bay, save and except non-working foremen and persons above the rank of non-working foreman." (8 employees in the unit).

(1974) 2 OLRB M.R. - PAGE 485.

4658-73-R: International Association of Bridge, Structural and Ornamental Iron Workers Local Union 721 (Applicant) v. Overhead Door Co. of Toronto Ltd. (Respondent).

Unit: "all employees of the respondent engaged in the installation, repairing, servicing and maintaining of doors in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (13 employees in the unit). (HAVING REGARD TO THE FOREGOING). (FOR THE PURPOSES OF CLARITY THE BOARD DECLARED THAT THE WAREHOUSEMEN AND THE ELECTRICIAN ARE NOT INCLUDED IN THE BARGAINING UNIT.).

(1974) 2 OLRB M.R. - PAGE 482.

5156-73-R: The Canadian Union of Public Employees (Applicant) v. Kirkland Lake Board of Education (Respondent) v. Group of Employees (Objectors).

Unit: "all office, clerical and technical employees of the respondent in the school district of Kirkland Lake, save and except head secretary secondary school and those above the rank of head secretary secondary school, co-secretaries to the director of education, secretary to the superintendent of business administration, personnel assistant, personnel and payroll records, clerk, persons regularly employed for not more than twenty-four hours per week, students employed during the school vacation period and persons covered under the subsisting collective agreement

between the respondent and the Canadian Union of Public Employees, Local 1671." (27 employees in the unit).

5436-74-R: Canadian Union of Public Employees (Applicant) v. Niagara Regional Health Unit (Respondent).

Unit: "all employees of the respondent in the Regional Municipality of Niagara, save and except Registered Nurses, Public Health Nurses, Junior Public Health Consultant, Senior Public Health Consultant, Assistant Secretary-Treasurer and persons above the rank of Assistant Secretary-Treasurer, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (55 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5527-74-R: Local Union 304, International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America - C.L.C. (Applicant) v. Photo Specctions Ltd. (Respondent).

Unit: "all employees of the respondent working at or out of the respondent's premises at Scarborough, Ontario, save and except managers, persons above the rank of manager, office and sales staff, students employed during the school vacation period and persons not regularly employed for more than 24 hours per week." (10 employees in the unit).

5605-74-R: Canadian Union of Public Employees (Applicant) v. The Corporation of the City of Belleville (Respondent).

Unit #1: "all employees of the respondent employed under the respondent's Recreation and Arena Committee in Belleville, save and except non-working foremen, persons above the rank of non-working foreman, office staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (13 employees in the unit).

(BARGAINING UNIT #2 - SEE APPLICATION CERTIFIED SUBSEQUENT TO POST-HEARING VOTE.).

5690-74-R: The Civil Service Association of Ontario (Inc.) (Applicant) v. The Greater Niagara General Hospital (Respondent) v. Service Employees Union, Local 204 (Intervener).

Unit: "all Radiology and Respiratory Technologists and Technicians employed by The Greater Niagara General Hospital in Niagara Falls, save and except the Assistant Chief Technologist, office staff, persons regularly employed for not more than 24 hours per week, students and persons covered by subsisting collective agreements." (21 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5691-74-R: The Civil Service Association of Ontario (Inc.) (Applicant) v. The Board of Governors of the Kingston General Hospital commonly known as Kingston General Hospital (Respondent) v. Group of Employees (Objectors).

Unit: "all Radiology Technologists, Technicians, of the Kingston, Hospital, commonly known as the Kingston General Hospital at Kingston, Ontario, save and except Chief Technologists and those above the rank of Chief Technologists, Student Technicians, and persons covered by subsisting collective agreement with the Canadian Union of Public Employees and its Local 1974 and the Nurses' Association, Kingston General Hospital." (28 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5720-74-R: The Civil Service Association of Ontario (Inc.) (Applicant) v. The District of Halton-Mississauga Ambulance Service Ltd. (Respondent).

Unit: "all employees of the respondent employed in the Ambulance Service Operations, save and except supervisors, persons above the rank of supervisor, office and clerical staff." (41 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR THE PURPOSE OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT PERSONS CLASSIFIED AS SHIFT SUPERVISORS ARE INCLUDED IN THE BARGAINING UNIT.).

5749-74-R: Ontario Nurses' Association (Applicant) v. Scarborough General Hospital (Respondent).

Unit #1: "all registered and graduate nurses employed by the respondent at Scarborough, engaged in a nursing capacity, save and except head nurses, persons above the rank of head nurse, and persons regularly employed for not more than 24 hours per week." (366 employees in the unit).

(BARGAINING UNIT #2 - SEE APPLICATION CERTIFIED SUBSEQUENT TO POST-HEARING VOTE).

5791-74-R: Teamsters International Union Local 990 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. North Shore Supply Co. Ltd. (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at Thunder Bay, save and except foremen and persons above the rank of foreman and office and sales staff." (7 employees in the unit).

5846-74-R: Canadian Union of Public Employees (Applicant) v. Thunder Bay District Health Unit (Respondent).

Unit: "all employees of the Thunder Bay District Health Unit save and except the Medical Officer of Health, the Dental Director, the Business Administrator and Secretary-Treasurer, the Director of Nursing, Chief Public Health Inspector, Nursing and Clerical Supervisors and persons above the rank of Supervisor, Information Officer, Nutritionist, Chief

Records Clerk and Supervisor of Clerk-Typists, Accounting and Budget Officer, Confidential Secretary to Business Administrator and Secretary-Treasurer, Confidential Secretary to the Medical Officer of Health and the Director of Nursing, Registered and Graduate Nurses and persons regularly employed for not more than 24 hours per week." (32 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR PURPOSES OF CLARITY, THE BOARD NOTED THE FURTHER AGREEMENT OF THE PARTIES THAT THE FOLLOWING PERSONS ARE EXEMPTED FROM THE DESCRIPTION AGREED TO BETWEEN THE PARTIES BECAUSE THEY FALL WITHIN SECTION 1(3)(b) OF THE LABOUR RELATIONS ACT AND DO EXERCISE MANAGERIAL FUNCTIONS OR ARE EMPLOYED IN A CONFIDENTIAL CAPACITY WITHIN THE MEANING OF THE LABOUR RELATIONS ACT; CHIEF RECORDS CLERK AND SUPERVISOR OF CLERK-TYPISTS, MRS. H. GILL; ACCOUNTING AND BUDGET OFFICER, MISS B. McNAMEE; NUTRITIONIST, MISS B. LALONDE; INFORMATION OFFICER, MR. G. ISHERWOOD.).

5866-74-R: United Brotherhood of Carpenters and Joiners of America, Local Union 1669 (Applicant) v. Superior Propane Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the District of Kenora, including the Patricia Portion, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

5872-74-R: International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC (Applicant) v. Ascolectric Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at Brantford, save and except foremen, persons above the rank of foreman, office and sales staff, field service representatives, persons regularly employed for not more than 24 hours per week, and students employed during the school vacation period." (66 employees in the unit).

5874-74-R: International Union of Operating Engineers, Local 793 (Applicant) v. Northeast Contractors Limited (Respondent).

Unit: "all employees of the respondent within a radius of thirty-five miles from the City of Sudbury Federal Building, engaged in the operation of cranes, shovels, bulldozers and similar equipment and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (no employees in the unit).

5876-74-R: United Brotherhood of Carpenters and Joiners of America, Local Union 93 (Applicant) v. Nasri Saab Construction (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the Regional Municipality of Ottawa - Carleton and the

United Counties of Prescott and Russell, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

5879-74-R: United Electrical, Radio and Machine Workers of America (UE) (Applicant) v. Quasar Electronics Canada Ltd. (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent in Markham, Ontario, save and except foremen, persons above the rank of foreman, and office and sales staff." (83 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5890-74-R: Laundry and Linen Drivers and Industrial Workers, Local 847 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Skyrise Window Cleaning Company (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, and office and sales staff." (3 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5892-74-R: Canadian Union of Public Employees (Applicant) v. The Red Lake Margaret Cochenour Memorial Hospital (Respondent).

Unit: "all employees of the respondent at Red Lake, Ontario save and except foremen and supervisors, persons above the rank of foreman and supervisor, professional medical staff, graduate and undergraduate nursing staff, technical personnel, graduate and undergraduate pharmacists, graduate and undergraduate dietitians, office and clerical staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (82 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR PURPOSES OF CLARITY THE BOARD DECLARED THAT THE TERM TECHNICAL PERSONNEL COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS.).

5893-74-R: The Civil Service Association of Ontario (Inc.) (Applicant) v. Locke-Britnell Ambulance (Respondent).

Unit: "all employees of the respondent in Prescott, Ontario employed in the ambulance service operations save and except supervisors and persons above the rank of supervisor, and office and clerical employees." (4 employees in the unit).

5894-74-R: The Civil Service Association of Ontario (Inc.) (Applicant) v. Metro Ambulance Service (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto employed in the ambulance service operations save and except supervisors and persons above the rank of supervisor, and office and clerical employees." (23 employees in the unit).

5902-74-R: London and District Building Service Workers' Union, Local 220, S.E.I.U., A.F.L., C.I.O., C.L.C. (Applicant) v. The Norfolk Hospital Association (Respondent).

Unit: "all employees of the respondent at Simcoe, regularly employed for not more than 24 hours per week and students employed during the school vacation period, save and except professional medical staff, graduate nursing staff, undergraduate nurses, graduate pharmacists, undergraduate pharmacists, inhalation therapists, inhalation therapist students, graduate dietitians, student dietitians, technical personnel, supervisors, persons above the rank of supervisor, office and clerical staff, and all those persons covered by subsisting collective agreements with the London and District Building Service Workers' Union, Local 220, S.E.I.U., A.F. of L., C.I.O., C.L.C., The Civil Service Association of Ontario (Inc.), and the Nurses' Association Norfolk General Hospital." (64 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5903-74-R: Canadian Union of Public Employees (Applicant) v. Sudbury Nursing Homes Limited (Respondent).

Unit #1: "all employees of the respondent at its nursing home at Sudbury, save and except Supervisors and Head Nurses, persons above the rank of Head Nurse and Supervisor, professional nursing staff, graduate nurses, undergraduate nurses, occupational therapists, physiotherapists, office and clerical staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (29 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Unit #2: "all employees of the respondent regularly employed for not more than 24 hours per week and students employed during the school vacation period at its nursing home, save and except Supervisors and Head Nurses, nursing staff, graduate nurses, undergraduate nurses, occupational therapists, physiotherapists, office and clerical staff." (26 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5908-74-R: Carpenters' District Council of Toronto & vicinity on behalf of Local Unions 27; 666; 681; 1133; 1963; 3227 and 3233 of The United Brotherhood of Carpenters and Joiners of America (Applicant) v. Introm Industries Limited (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York

and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit).

5910-74-R: Retail, Wholesale and Department Store Union, AFL:CIO:CLC (Applicant) v. Weston Bakeries Limited (Respondent).

Unit: "all office and clerical employees of the respondent at Sudbury, save and except the Office Manager, persons above the rank of Office Manager, Accountant, the Secretary to the General Manager and students employed during the school vacation period." (6 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5912-74-R: Service Employees Union, Local 210, affiliated with Service Employees International Union, AFL-CIO-CLC (Applicant) v. The Metropolitan General Hospital (Respondent).

Unit: "all employees of the respondent at Windsor, employed in its Radiological Department as Graduate Registered Radiological Technologists and Graduate-Non-Registered Radiological Technologists, save and except Supervisory Technologist and persons above the rank of Supervisory Technologist, Office and Clerical Staff, Students in training, and persons covered by subsisting collective agreements between the respondent and Nurses' Association Metropolitan General Hospital, The Canadian Union of Public Employees and its Local 1124; Service Employees Union, Local 210, (General Staff Unit and Laboratory Technologist Unit); The Canadian Union of Operating Engineers; The International Brotherhood of Electrical Workers, Local 911 and persons covered by a certificate issued to the Civil Service Association of Ontario (Inc.)." (9 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5913-74-R: Local Union 2345, International Brotherhood of Electrical Workers, AFL CIO CLC (Applicant) v. Raymar Electronics & Controls Ltd. (Respondent).

Unit: "all employees of the respondent at Waterloo, save and except foremen, persons above the rank of foreman, office and sales staff." (3 employees in the unit).

5917-74-R: United Cement, Lime and Gypsum Workers International Union, A.F.L., C.I.O., C.L.C. (Applicant) v. J. F. Marshall & Sons Limited (Respondent).

Unit: "all employees of the respondent engaged in its gravel pits in the Township of London save and except foremen, persons above the rank of foreman, office and sales staff, dispatchers, persons regularly employed for not more than 24 hours per week and students employed

during the school vacation period." (19 employees in the unit).
(HAVING REGARD TO THE AGREEMENT OF THE PARTIES, AND FOR THE PURPOSES OF CLARIFICATION, IT IS NOTED THAT HIGHWAY TRUCK DRIVERS ARE EXCLUDED FROM THE BARGAINING UNIT.).

5919-74-R: International Union of Operating Engineers, Local 793 (Applicant) v. Dore Wrecking Company (Respondent).

Unit: "all employees of the respondent in the District of Thunder Bay, engaged in the operation of cranes, shovels, bulldozers and similar equipment and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

5928-74-R: Retail Clerks International Association (Applicant) v. Lord's Supervalu Pharmacy Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent in London, save and except store manager, persons above the rank of store manager, graduate pharmacists and undergraduate pharmacists." (6 employees in the unit).

5933-74-R: United Brotherhood of Carpenters and Joiners of America, Local Union 1190 (Applicant) v. Fairbank Carpentry (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (11 employees in the unit).

5944-74-R: Christian Labour Association of Canada (Applicant) v. Simcoe Mechanical Contracting Ltd. (Respondent).

Unit: "all plumbers and plumbers' apprentices in the employ of the respondent in the Townships of Hope, South Monaghan, Alnwick and all lands south thereof in the United Counties of Northumberland and Durham, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit). (HAVING REGARD TO THE FOREGOING).

5945-74-R: International Union of Operating Engineers, Local 793 (Applicant) v. Evans Contracting Limited (Respondent).

Unit: "all employees of the respondent in the County of Lennox and Addington, and the County of Frontenac and the Townships of Rear of Leeds and Lansdowne, Rear of Yonge and Escott, and all lands south thereof in the United Counties of Leeds and Grenville, engaged in

the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (9 employees in the unit).

5946-74-R: International Union of Operating Engineers, Local 793 (Applicant) v. Quigley Contracting (Respondent).

Unit: "all employees of the respondent in the Regional Municipality of Niagara and the County of Haldimand, engaged in the operation of cranes, shovels, bulldozers and similar equipment and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (6 employees in the unit).

5947-74-R: Labourers' International Union of North America, Local 607 (Applicant) v. R. J. Breton, General Contractor (Respondent).

Unit: "all construction labourers in the employ of the respondent in The Townships of Alexandra, Webster, Beniah, Haggart, Kendrey, Colquhoun, Sydere, Bradburn and Calder in the District of Cochrane, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

5950-74-R: The Civil Service Association of Ontario (Inc.) (Applicant) v. Welland County General Hospital (Respondent).

Unit: "all Radiology and Darkroom Technicians employed by the respondent in Welland, save and except Assistant Chief Technician, persons above the rank of Assistant Chief Technician, students in training, office and clerical employees, persons employed for not more than 24 hours per week and persons covered by existing collective agreements between the parties." (8 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5954-74-R: The United Brotherhood of Carpenters and Joiners of America, Local Union 1669 (Applicant) v. R. J. Breton - General Contractor (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in The Townships of Alexandra, Webster, Beniah, Haggart, Kendrey, Colquhoun, Sydere, Bradburn and Calder in the District of Cochrane, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

5957-74-R: Canadian Guards Association (Applicant) v. Lakehead University (Respondent).

Unit: "all security officers in the employ of the respondent in the City of Thunder Bay, save and except sergeants, persons above the rank of sergeant, watchmen, persons regularly employed for not more than twenty four hours per week and students employed during the school vacation period." (10 employees in the unit).

5970-74-R: United Brotherhood of Carpenters and Joiners of America Local 1988 (Applicant) v. Frank Zepet Const., Co. Ltd. (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the Townships of Elizabethtown, Augusta, and Edwardsburgh and all lands south thereof (there are three Municipalities south of these townships: Brockville, Prescott and Cardinal) in the United Counties of Leeds and Grenville, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

5971-74-R: Labourers' International Union of North America, Local 183 (Applicant) v. Arpani Excavating Ltd. (Respondent).

Unit: "all construction labourers in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except construction labourers employed on building projects, non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

5972-74-R: International Association of Machinists and Aerospace Workers (Applicant) v. Berts Auto Supply Ltd. (Respondent).

Unit: "all employees of the respondent at Sault Ste. Marie, save and except foremen/supervisors, persons above the rank of foreman/supervisor, office clerical and sales staff, student employed during the school vacation period and persons not regularly employed for more than 24 hours per week." (11 employees in the unit).

5980-74-R: International Association of Machinists and Aerospace Workers (Applicant) v. Berts Auto Supply Ltd. (Respondent).

Unit: "all office and clerical employees of the respondent at Sault Ste. Marie, save and except supervisors, persons above the rank of supervisor, students employed during the school vacation period and persons employed for not more than 24 hours per week." (5 employees in the unit).

5982-74-R: Warehousemen and Miscellaneous Drivers, Local Union No. 419, affiliated with the International Brotherhood of Teamsters, Chauffeurs,

Warehousemen and Helpers of America (Applicant) v. The Comrie Lumber Company Limited (Respondent).

- and

5983-74-R: Warehousemen and Miscellaneous Drivers, Local Union No. 419, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. The Comrie Lumber Company Limited (Respondent).

- and -

5984-74-R: Warehousemen and Miscellaneous Drivers, Local Union No. 419, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. The Comrie Lumber Company Limited (Respondent).

Unit: "all employees of the respondent in Metro Toronto and the Regional Municipality of Durham save and except foremen, persons above the rank of foreman, office and clerical and sales staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (15 employees in the unit).
(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

5994-74-R: Lumber and Sawmill Workers Union, Local 2693, of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. Stead and Lindstrom Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent in the District of Kenora, including the Patricia Portion, save and except non-working foremen and persons above the rank of non-working foreman." (6 employees in the unit). (HAVING REGARD TO THE FOREGOING).

5995-74-R: United Brotherhood of Carpenters and Joiners of America, Local Union 446 (Applicant) v. Algoma Builders Supply Limited (Respondent) v. Employee (Objector).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in that portion of the District of Algoma south of the 49th parallel of latitude, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit).
(FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT CARPENTERS ENGAGED IN MAINTENANCE WORK ARE NOT INCLUDED IN THE BARGAINING UNIT.).

5997-74-R: Labourers International Union of North America, Local 837, Hamilton, Ontario (Applicant) v. Newman Bros. Co. Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent in the County of Wentworth including part of Township of North Dumfries annexed from Beverly Township and the Township of Nassagaweya and the Town of Burlington in the County of Halton, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

6002-74-R: Amalgamated Clothing Workers of America (Applicant) v. Xerox of Canada Limited (Respondent).

Unit: "all employees of the respondent at its Manufacturing and Distribution operation at Caravelle Drive in Mississauga, save and except Associate Supervisors, Supervisors, Foremen, Foreladies, persons above the rank of Associate Supervisor, Supervisor, Foreman, Forelady, Office Staff, Sales Staff, Technical Representatives, Engineers, Chemists, Draftsmen, technical and engineering aids, quality control auditors, dispatchers, expeditors, guards, watchmen, persons who regularly work less than 24 hours per week and students employed during the school vacation period." (35 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6003-74-R: The Civil Service Association of Ontario (Inc.) (Applicant) v. Northwestern General Hospital (Respondent) v. Service Employees Union, Local 204, affiliated AFL-CIO-CLC (Intervener).

Unit: "all medical laboratory technologists, technicians and assistants employed by the respondent in its department of medical laboratories in Metropolitan Toronto, save and except supervisors, persons above the rank of supervisor, members of the medical and nursing professions, students in training, office and clerical employees, persons regularly employed for not more than 24 hours per week, students employed during the school vacation periods and persons covered by subsisting collective agreements between the respondent and the Canadian Union of Operating Engineers and between the respondent and the Ontario Nurses Association." (40 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6004-74-R: The Civil Service Association of Ontario (Inc.) (Applicant) v. Cobourg & District Ambulance Service (Respondent).

Unit: "all employees of the respondent in the County of Northumberland and the Regional Municipality of Durham, save and except supervisors, persons above the rank of supervisor, office and clerical employees." (9 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6010-74-R: Office and Professional Employees International Union (Applicant) v. Spruce Falls Power and Paper Company, Limited (Respondent).

Unit: "all office cleaners employed by the respondent at its office in Kapuskasing save and except office managers and persons above the rank of office manager." (4 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6011-74-R: The Civil Service Association of Ontario (Inc.) (Applicant) v. Welland County General Hospital (Respondent).

Unit: "all Radiology and Darkroom Technicians regularly employed by the respondent in Welland for not more than 24 hours per week, save and except Assistant Chief Technician, persons above the rank of Assistant Chief Technician, students in training, office and clerical employees, and persons covered by existing collective agreement between the parties." (5 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6017-74-R: Local Union 1190, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Canadian Carpentry (Respondent).

Unit #1: "all carpenters and carpenters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit).

Unit #2: "all carpenters and carpenters' apprentices in the employ of the respondent in the County of Simcoe, the District Municipality of Muskoka and the Township of Thorah and all land north thereof in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (7 employees in the unit).

6029-74-R: Ontario Nurses' Association (Applicant) v. Scarborough Centenary Hospital Association (Respondent).

Unit: "all registered and graduate nurses employed by the respondent in Scarborough engaged in a nursing capacity, save and except senior team leaders and those above the rank of senior team leader." (392 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR THE PURPOSE OF CLARITY THE BOARD NOTED THAT THE PARTIES AGREED THAT STAFF-IN-SERVICE CO-ORDINATORS AND CLINICAL INSTRUCTORS ARE EXCLUDED FROM THE BARGAINING UNIT.).

6030-74-R: Teamsters, Chauffeurs, Warehousemen and Helpers, Local 141 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Superior Concrete Products (London) Ltd. (Respondent).

Unit: "all employees of the respondent at Lambeth, in the Township of Westminster, save and except foremen, those above the rank of foreman, office and sales staff." (9 employees in the unit).

6033-74-R: International Union of Operating Engineers, Local 793 (Applicant) v. Palurema Contractors Limited (Respondent).

Unit: "all employees of the respondent in the County of Wellington, engaged in the operation of cranes, shovels, bulldozers and similar equipment and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (6 employees in the unit).

6034-74-R: Lumber and Sawmill Workers Union, Local 2693, of the United Brotherhood of Carpenters & Joiners of America (Applicant) v. Gateway Building and Supply Ltd. (Respondent).

Unit: "all construction labourers in the employ of the respondent in the District of Kenora, including the Patricia Portion, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit). (HAVING REGARD TO THE FOREGOING).

6035-74-R: Retail Clerks' International Association (Applicant) v. Dominion Stores Limited Kenora, Ontario (Respondent).

Unit: "all employees of the respondent at Kenora, save and except Department Managers, persons above the rank of Department Manager, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (17 employees in the unit).

6045-74-R: United Steelworkers of America (Applicant) v. North American Refractories Limited (Respondent).

Unit: "all employees of the respondent company in Caledonia save and except foremen, persons above the rank of foreman, office and sales staff and students employed during the school vacation period." (11 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6046-74-R: International Association of Machinists and Aerospace Workers (Applicant) v. Atlas Welding Company Ltd. (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office and sales staff." (2 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6047-74-R: Service Employees' Union, Local 210, affiliated with Service Employees' International Union, AFL-CIO-CLC (Applicant) v. Saugeen Memorial Hospital (Respondent).

Unit #1: "all employees of the respondent in Southampton save and except professional Medical Staff, Graduate Nursing Staff, Undergraduate Nurses, Graduate Pharmacists, Undergraduate Pharmacists, Graduate Dietitians, Technical Personnel, Supervisors, persons above the rank of Supervisor,

Office and Clerical Staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (38 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR PURPOSES OF CLARITY THE BOARD DECLARED THAT THE TERM "TECHNICAL PERSONNEL" COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS.).

(GRANTED).

Unit #2: "all employees of the respondent in Southampton, regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (12 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(DISMISSED).

6048-74-R: Retail Clerks' International Association (Applicant) v. Dominion Stores Limited, Kenora, Ontario (Respondent).

Unit: "all employees of the respondent at Kenora, regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (52 employees in the unit).

6050-74-R: Canadian Brotherhood of Railway Transport and General Workers (Applicant) v. Westway Forwarding Limited (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto save and except supervisors, persons above the rank of supervisor and office and sales staff." (29 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6058-74-R: Labourers International Union of North America, Local 837 (Applicant) v. G. C. Romano Sons (Toronto) Ltd. (Respondent).

Unit: "all construction labourers in the employ of the respondent in the County of Wentworth including part of Township of North Dumfries annexed from Beverly Township and the Township of Nassagaweya and the Town of Burlington in the County of Halton, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

6067-74-R: Lumber and Sawmill Workers Union, Local 2693, of the United Brotherhood of Carpenters & Joiners of America (Applicant) v. Garton Construction (Respondent).

Unit: "all construction labourers, truck drivers and all employees of the respondent in the District of Kenora, including the Patricia

Portion, engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit). (HAVING REGARD TO THE FOREGOING).

6068-74-R: Labourers' International Union of North America Local 527 (Applicant) v. R. E. Hodgins Industries Ltd. (Respondent).

Unit: "all construction labourers in the employ of the respondent in the United Counties of Stormont, Dundas and Glengarry, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

6070-74-R: Union of Fastway Transport Drivers (Applicant) v. Fastway Transport (Respondent).

Unit: "all employees of the respondent at Burlington save and except foremen, persons above the rank of foreman, office and sales staff." (87 employees in the unit).

6071-74-R: The Civil Service Association of Ontario (Inc.) (Applicant) v. Northwestern General Hospital (Respondent) v. Service Employees Union, Local 204, affiliated AFL-CIO-CLC (Intervener).

Unit: "all X-Ray technologists, inhalation therapists, E.C.G. technicians, and dark room assistants employed by the respondent in Metropolitan Toronto, save and except chief technologist, chief therapist, persons above the rank of chief technologist and chief therapist, persons regularly employed for not more than 24 hours per week, students in training, students employed for the school vacation periods, and employees covered by subsisting collective agreements." (13 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6073-74-R: Teamsters Local Union No. 230, Ready Mix, Building Supply, Hydro and Construction Drivers, Warehousemen and Helpers, Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Clarkson Construction Company Limited (Respondent).

Unit: "all truck drivers in the employ of the respondent, in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except foremen and persons above the rank of foreman." (19 employees in the unit).

6092-74-R: Local Union 1190, United Brotherhood of Carpenters and Joiners of America (Applicant) v. P. Bischoff Carpentry Ltd. (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working formen." (8 employees in the unit).

6103-74-R: Labourers' International Union of North America Local 493 (Applicant) v. Branconnier Contractors (Respondent).

Unit: "all construction labourers in the employ of the respondent within a radius of thirty-five miles from the City of Sudbury Federal Building, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

Applications Certified Subsequent to Pre-Hearing Vote

5370-74-R: The Civil Service Association of Ontario (Inc.) (Applicant) v. The Simcoe County Board of Education (Respondent).

Unit: "all office, clerical and technical employees of the respondent in Simcoe County, save and except supervisors, foremen, persons above the rank of supervisor and foreman, students employed during the school vacation period, employees covered by a subsisting collective agreement with C.U.P.E., Local 1310, executive secretaries, all persons employed in a confidential capacity in the Personnel Department, Academic Consultants, Special Education Co-Ordinator, and all persons covered by the Teaching Professions Act." (192 employees in the unit). (... THE BOARD DIRECTS THAT THE BALLOT BOX CONTAINING ALL THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE BE SEALED AND THE BALLOTS NOT COUNTED PENDING THE FURTHER DIRECTION OF THE BOARD, (EXAMINER APPOINTED)). (THE BOARD FURTHER STATES IN IT'S DECISION DATED JULY 4TH, 1974: "PURSUANT TO THE DECISION OF THE BOARD DATED APRIL 11, 1974, THE BALLOT BOX CONTAINING ALL THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE CONDUCTED ON APRIL 23, 1974, WAS SEALED PENDING A RULING BY THE BOARD CONCERNING THE ELIGIBILITY TO VOTE OF CERTAIN PERSONS WHOSE BALLOTS WERE SEGREGATED AT THIS TIME. THE MEETING CONVENED BY THE EXAMINER IN THIS REGARD CULMINATED IN THE REPORT OF THE EXAMINER HEREIN DATED JUNE 6, 1974. ...).

Number of names of persons on revised voters list	188
Number of persons who cast ballots	188
Number of ballots marked in favour of applicant	143
Number of ballots marked against applicant	45

5445-74-R: The Canadian Union of Operating Engineers (Applicant) v. Rothsay Concentrates Limited (Respondent) v. Teamsters Local Union No. 879 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Intervener).

Unit: "all Stationary Engineers in the operation of the Boiler Room of the respondent at R. R. #1, Moorefield, Ontario, save and except the Assistant Chief Engineer and persons above the rank of Assistant Chief Engineer." (5 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Number of names of persons on voters' list	5
Number of persons who cast ballots	5
Number of ballots marked in favour of applicant	5
Number of ballots marked against applicant	0

5742-74-R: United Electrical, Radio and Machine Workers of America (UE) (Applicant) v. C.P. Clare of Canada Ltd., Division of General Instrument of Canada Ltd. (Respondent).

Unit: "all employees of the respondent at Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office and sales staff, technical staff and students employed during the school vacation period." (287 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Number of names of persons on revised voters' list	269
Number of persons who cast ballots	256
Number of spoiled ballots	5
Number of ballots marked in favour of applicant	222
Number of ballots marked against applicant	29

5778-74-R: Service Employees Union, Local 204, Affiliated with S.E.I.U., A.F. of L., C.I.O., C.L.C. (Applicant) v. Welland County General Hospital (Respondent) v. The Civil Service Association of Ontario (Intervener).

Unit: "all clerical employees of the respondent at Welland, Ontario save and except supervisors, persons above the rank of supervisor, secretary to the administrator, secretary to the director of nursing, secretary to the personnel manager, persons regularly employed for not more than twenty-four hours per week, students employed during the school vacation period and persons covered by subsisting collective agreements." (85 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Number of names of persons on voters' list		66
Number of persons who cast ballots	62	
Number of ballots marked in favour of applicant	43	
Number of ballots marked against applicant	19	

5827-74-R: United Electrical, Radio and Machine Workers of America (UE) (Applicant) v. Schick (Canada) Limited (Respondent).

Unit: "all employees of the respondent in the municipality of Metropolitan Toronto save and except foremen, persons above the rank of foreman, office, sales and service staff, persons who do not normally work more than twenty-four hours per week and students employed during the school vacation period." (131 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Number of names of persons on revised voters' list		117
Number of persons who cast ballots	104	
Number of ballots marked in favour of applicant	74	
Number of ballots marked against applicant	30	

5841-74-R: Canadian Union of Operating Engineers (Applicant) v. Kemptville District Hospital (Respondent) v. International Union of Operating Engineers Local 796 (Intervener).

Unit: "all stationary engineers, and persons primarily engaged as their helpers employed by Kemptville District Hospital in its boiler room at Kemptville, Ontario save and except Chief Engineer, persons above the rank of Chief Engineer and persons regularly employed for not more than twenty-four hours per week." (6 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Number of persons on voters list		5
Number of persons who cast ballots	5	
Number of ballots marked in favour of Applicant	4	
Number of ballots marked in favour of Intervener	1	

5898-74-R: Teamsters Local 879 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Vineland Quarries & Crushed Stone Limited (Respondent).

Unit: "all employees of the respondent working at or out of the Town of Lincoln, Regional Municipality of Niagara save and except foremen, dispatchers, persons above the rank of foreman and dispatcher, office and sales staff and persons regularly employed for not more than twenty-four hours per week and students hired during the school vacation period." (19 employees in the unit).

Number of names of persons on revised voters' list		17
Number of persons who cast ballots	17	
Number of ballots marked in favour of applicant	11	
Number of ballots marked against applicant	6	

5901-74-R: International Woodworkers of America (Applicant) v. The Andrew Malcolm Furniture Company Ltd. (Respondent).

Unit: "all employees of the Andrew Malcolm Furniture Company Ltd., Listowel, Ontario, save and except foremen, persons above the rank of foreman, office and sales staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (89 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Number of names of persons on revised voters' list		87
Number of persons who cast ballots	75	
Number of segregated ballots cast by persons whose names appear on voters list	1	
Number of ballots marked in favour of applicant	46	
Number of ballots marked against the applicant	28	

5936-74-R: Canadian Food and Allied Workers Local Union 725, Chartered by the Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC (Applicant) v. Sayvette Limited (Respondent).

Unit: "all employees of the respondent in the City of Windsor, save and except Group Managers, persons above the rank of Group Manager, Personnel Representatives, Security Staff and Management Trainees." (68 employees in the unit).

Number of names of persons on revised voters' list		69
Number of persons who cast ballots	59	
Number of ballots marked in favour of applicant	34	
Number of ballots marked against applicant	25	

Applications Certified Subsequent to Post-Hearing Vote

5539-74-R: Canadian Union of Public Employees (Applicant) v. University of Waterloo (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent's Food Services Department at Waterloo, save and except supervisors, persons above the rank of supervisor, office, clerical and technical employees and persons regularly employed for not more than 24 hours per week." (195 employees in the unit). (THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT PERSONS CLASSIFIED AS SUPERVISOR - GROUP LEADER ARE INCLUDED IN THE BARGAINING UNIT.).

Number of names of persons on voters' list		133
Number of persons who cast ballots	102	
Number of spoiled ballots	2	
Number of ballots marked in favour of applicant	58	
Number of ballots marked against applicant	42	

5605-74-R: Canadian Union of Public Employees (Applicant) v. The Corporation of the City of Belleville (Respondent).

Unit #2: "all employees of the respondent regularly employed under the respondent's Recreation and Arena Committee in Belleville for not more than 24 hours per week and student employed during the school vacation period, save and except non-working foremen, persons above the rank of non-working foreman and office staff." (16 employees in the unit).

Number of names of persons on voters' list		12
Number of persons who cast ballots	7	
Ballots segregated and not counted	4	
Number of ballots marked in favour of applicant	3	
Number of ballots marked against applicant	0	

(BARGAINING UNIT #1 - SEE BARGAINING UNITS CERTIFIED - NO VOTE CONDUCTED).

5622-74-R: The Hotel and Restaurant Employees' and Bartenders' International Union Local 412 (Applicant) v. Parnell Foods Limited (Respondent).

Unit #1: "all employees of the respondent working on the premises of The Algoma Steel Corporation Limited at Sault Ste. Marie, save and except supervisors, persons above the rank of supervisor, office and sales staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (29 employees in the unit).

Number of names of persons on revised voters' list		32
Number of persons who cast ballots	25	
Number of ballots marked in favour of applicant	25	
Number of ballots marked against applicant	0	

(BARGAINING UNIT #2 - SEE APPLICATION FOR CERTIFICATION DISMISSED - NO VOTE CONDUCTED).

5636-74-R: Canadian Union of Public Employees (Applicant) v. The Corporation of the City of Brampton (Respondent).

Unit: "all employees of the respondent employed as drivers within its dial-a-bus system in Brampton, save and except foremen, persons above the rank of foreman, and persons regularly employed for not more than 24 hours per week." (22 employees in the unit).

Number of names of persons on revised voters' list		22
Number of persons who cast ballots	21	
Number of ballots marked in favour of applicant	13	
Number of ballots marked against applicant	8	

5662-74-R: United Steelworkers of America (Applicant) v. Westank Industries, Ltd. (Respondent).

Unit: "all employees of the respondent at Clarkson, save and except foremen, persons above the rank of foreman, office and sales staff, persons regularly employed for not more than 24 hours per week, and students employed during the school vacation period." (6 employees in the unit).

Number of names of persons on voters' list		4
Number of persons who cast ballots	4	
Number of ballots marked in favour of applicant	4	
Number of ballots marked against the applicant	0	

5739-74-R: United Steelworkers of America (Applicant) v. Canadian Admiral Corporation Ltd. (Respondent).

Unit: "all employees of the respondent working in and out of London, save and except foremen, persons above the rank of foreman, office and sales staff." (15 employees in the unit).

Number of names of person on voters list		15
Number of persons who cast ballots	14	
Number of spoiled ballots	1	
Number of ballots marked in favour of applicant	8	
Number of ballots marked against applicant	5	

5749-74-R: Ontario Nurses' Association (Applicant) v. Scarborough General Hospital (Respondent).

Unit #2: "all employees of the respondent at Scarborough regularly employed for not more than 24 hours per week engaged in a nursing capacity, save and except head nurses and persons above the rank of head nurse." (145 employees in the unit).

Number of names of persons on voters' list		154
Number of persons who cast ballots	90	
Number of ballots marked in favour of applicant	87	
Number of ballots marked against applicant	3	

(BARGAINING UNIT #1 - SEE BARGAINING UNITS CERTIFIED - NO VOTE CONDUCTED).

APPLICATIONS FOR CERTIFICATION DISMISSED DURING JULY

No Vote Conducted

3953-73-R: International Printing Pressmen and Assistants Union (I.P.P. & A.U.) of North America (Applicant) v. Toronto Star Limited (Respondent) v. Toronto Mailers' Union No. 5 (Intervener). (91 employees).

(1974) 2 OLRB M.R. - PAGE 416.

4118-73-R: United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 46 (Applicant) v. Warnock Hersey International Limited - Professional Services Division (Respondent).

Unit: "all employees of the Professional Services Division of the respondent working at or out of its Toronto and Hamilton offices save and except supervisors, persons above the rank of supervisor, professional engineers and chemists, office and sales staff, persons regularly employed for not more than twenty-four hours per week, students employed during the school vacation period and students employed on a co-operative training programme." (39 employees in the unit). (HAVING REGARD TO THE FOREGOING).

(1974) 2 OLRB M.R. - PAGE 412.

4304-73-R: Labourers' International Union of North America, Local 183 (Applicant) v. Tru-Wall Concrete Forming Ltd. (Respondent). (86 employees).

4306-73-R: Labourers' International Union of North America, Local 183 (Applicant) v. L. Rocca Construction Co. Ltd. (Respondent). (71 employees).

4559-73-R: Labourers' International Union of North America, Local 183 (Applicant) v. Sur-Wall Construction Limited (Respondent). (85 employees).

5347-73-R: International Union of Operating Engineers, Local 793 (Applicant) v. Meridian Building Group Ltd. (Respondent). (5 employees).

(1974) 2 OLRB M.R. - PAGE 444.

5622-74-R: The Hotel and Restaurant Employees' and Bartenders' International Union Local 412 (Applicant) v. Parnell Foods Limited (Respondent).

Unit #2: "all employees of the respondent regularly employed for not more than 24 hours per week and students employed during the school vacation period working on the premises of The Algoma Steel Corporation Limited at Sault Ste. Marie, save and except supervisors, persons above the rank of supervisor, and office and sales staff." (4 employees in the unit).

(BARGAINING UNIT #1 - SEE APPLICATION FOR CERTIFICATION SUBSEQUENT TO POST-HEARING VOTE).

5793-74-R: Labourers' International Union of North America, Local 183 (Applicant) v. Star Wall Concrete Forming Limited (Respondent). (81 employees).

5877-74-R: Grand River Valley District Council, of The United Brotherhood of Carpenters and Joiners of America (Applicant) v. Sonnenberg Industries Limited operating as Craftwood Products (Respondent) v. Group of Employees (Objectors). (2 employees).

5895-74-R: Ottawa Newspaper Guild, Local 205, the Newspaper Guild (Applicant) v. The Journal Publishing Company of Ottawa, Limited (Respondent). (55 employees).

(1974) 2 OLRB M.R. - PAGE 499.

5964-74-R: Laborers International Union of North America, Local 493 (Applicant) v. Anthony Derosé Limited (Respondent). (7 employees).

5979-74-R: The United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada Local 593 (Applicant) v. Thermo Design International (Respondent). (30 employees).

5985-74-R: Laborers International Union of North America, Local 493 (Applicant) v. Anthony DeRose Limited (Respondent). (4 employees).

5998-74-R: The United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada - Local Union 628 (Applicant) v. Pile Foundations Ltd. (Respondent). (4 employees).

6013-74-R: Labourers' International Union of North America, Local 607 (Applicant) v. Kap Cement Ltd. Ready Mix Concrete (Respondent). (5 employees).

6018-74-R: Service Employees Union, Local 204, affiliated with A. F. of L., C.I.O., C.L.C. (Applicant) v. Northwestern General Hospital (Respondent) v. The Civil Service Association of Ontario (Inc.) (Intervener). (192 employees).

6083-74-R: Labourers' International Union of North America Local 607 (Applicant) v. Tackle Construction Limited (Respondent). (10 employees).

Certification Dismissed Subsequent to Pre-Hearing Vote

2726-72-R: Retail Clerks International Association (Applicant) v. Zehr's Markets Limited (Respondent) v. Diamond "Z" Association (Intervener).

Voting Constituency: "All employees of the respondent at its retail stores in Waterloo regularly employed for not more than 24 hours per week and students employed during the school vacation period, save and except store managers and persons above the rank of store manager." (160 employees). (THE BOARD FURTHER STATED IN IT'S DECISION DATED DECEMBER 8TH, 1972: FOR THE PURPOSES OF CLARITY THE BOARD DECLARES THAT ALL EMPLOYEES OF THE RESPONDENT AT ITS ERB STREET STORE ON OCTOBER 31, 1972 ARE EMPLOYEES OF THE RESPONDENT INCLUDED IN THE VOTING CONSTITUENCY AND ACCORDINGLY ARE ELIGIBLE TO VOTE TO THIS MATTER. ... THE BOARD DIRECTS THAT THE BALLOT BOX CONTAINING ALL THE BALLOTS CAST IN A PRE-HEARING REPRESENTATION VOTE SHALL BE SEALED AND THAT THE BALLOTS SHALL NOT BE COUNTED PENDING THE FURTHER DIRECTION OF THE BOARD.). (THE BOARD FURTHER STATES IN IT'S DECISION DATED JULY 5TH, 1974: DURING THE COURSE OF THE HEARING OF THIS MATTER ON JULY 5, 1974, THE APPLICANT AND THE RESPONDENT ADVISED THE BOARD THAT THEY HAVE NOW REACHED AGREEMENT CONCERNING THE ELIGIBILITY TO VOTE OF THE TWENTY-NINE PERSONS WHO CAST SEGREGATED BALLOTS DURING THE COURSE OF THE VOTE CONDUCTED IN THIS MATTER ON DECEMBER 14 AND 15, 1972. ...).

Number of names of persons on revised voters' list		178
Number of persons who cast ballots	144	
Number of spoiled ballots	1	
Number of ballots marked in favour of applicant	36	
Number of ballots marked against applicant	107	

4748-73-R: United Glass & Ceramic Workers of North America, A.F.L.-C.I.O.-C.L.C. (Applicant) v. Pilkington Brothers (Canada) Limited (Respondent) v. International Union of Operating Engineers Local 796 (Intervener).

Voting Constituency: "All office and technical employees of the respondent's manufacturing division at its plant in the Borough of Scarborough, save and except supervisors, persons above the rank of supervisor, secretary to the works personnel manager, persons employed in the medical unit, secretary to the works manager, secretary to the production manager, persons regularly employed for not more than 24 hours per week, and employees covered by all subsisting collective agreements with the United Glass and Ceramic Workers of North America Local 295; International Union of Operating Engineers, Local 796 and the International Union Plant Guard Workers of America, Local 1962." (120 employees). (THE BOARD DIRECTED THAT THE PERSONNEL CLERKS, THE PERSONNEL ASSISTANT, THE CO-ORDINATOR, THE PROCESS TECHNOLOGISTS, THE MANAGEMENT ACCOUNTANTS AND THE PAY MASTER BE PERMITTED TO VOTE AND THAT THEIR BALLOTS BE SEGREGATED AND NOT COUNTED PENDING THE FURTHER DIRECTION OF THE BOARD.).

(THE BOARD DIRECTS THAT THE BALLOT BOX CONTAINING ALL THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE IN THIS MATTER BE SEALED AND THE BALLOTS NOT COUNTED PENDING THE FURTHER DIRECTION OF THE BOARD.).

Number of names of persons on revised voters' list		132
Number of persons who cast ballots	131	
Ballots segregated and not counted	19	
Number of ballots marked in favour of applicant	44	
Number of ballots marked against applicant	68	

5199-73-R: Service Employees International Union, Local 532 (Applicant) v. Rest Haven Hospital (Respondent).

Voting Constituency: "All employees of the respondent in the City of Hamilton, save and except registered nurses, physiotherapist, supervisor, persons above the rank of supervisor, office staff, persons regularly employed for not more than twenty-four hours per week, and students employed during the school vacation period." (32 employees).

Number of names of persons on revised voters' list		22
Number of persons who cast ballots	21	
Number of ballots marked in favour of applicant	9	
Number of ballots marked against applicant	12	

5763-74-R: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) (Applicant) v. Central Stampings Limited (Respondent) v. Christian Labour Association of Canada (Intervener).

Voting Constituency: "All employees of the respondent at Windsor, save and except foremen, persons above the rank of foreman, office and sales staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (128 employees).

Number of names of persons on revised voters' list		102
Number of persons who cast ballots	102	
Number of spoiled ballots	1	
Number of ballots marked in favour of applicant	49	
Number of ballots marked in favour of intervener	52	

5774-74-R: The Hotel and Club Employees Union Local 299, Toronto of the Hotel and Restaurant Employees and Bartenders International Union A.F.L.-C.I.O.-C.L.C. (Applicant) v. Mount Soudan Apartment Hotel (Soud-Mont Management Ltd.) (Respondent).

Voting Constituency: "All employees of the respondent in Metropolitan Toronto save and except Assistant Manager, persons above the rank of Assistant Manager, Office Staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (23 employees). (FOR THE PURPOSE OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT "AUDIT DEPARTMENT STAFF" ARE EXCLUDED UNDER THE TERM "OFFICE STAFF." ...).

Number of names of persons on revised voters' list		21
Number of persons who cast ballots	19	
Number of ballots marked in favour of applicant	3	
Number of ballots marked against applicant	16	

5805-74-R: United Steelworkers of America (Applicant) v. Brampton Aluminum Products (Respondent).

Voting Constituency: "All employees of the respondent at Brampton, Ontario, save and except foremen, persons above the rank of foreman, office and sales staff and students employed during the school vacation period." (50 employees).

Number of names of persons on revised voters' list		49
Number of persons who cast ballots	46	
Number of ballots marked in favour of applicant	8	
Number of ballots marked against applicant	38	

5806-74-R: International Woodworkers of America (Applicant) v. Homco Industries Limited (Respondent).

Voting Constituency: "All employees of the respondent in the Township of West Meath, save and except foremen, persons above the rank of foreman, office and sales staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (172 employees).

Number of names of persons on revised voters' list		170
Number of persons who cast ballots	148	
Ballots segregated and not counted	2	
Number of ballots marked in favour of applicant	69	
Number of ballots marked against applicant	77	

5883-74-R: Textile Workers Union of America, AFL-CIO-CLC (Applicant) v. Bradford Spinners Limited (Respondent).

Voting Constituency: "All employees of the respondent at its plant in Toronto, Ontario, save and except foremen, foreladies, those above the rank of foreman and forelady, office and sales staff, persons regularly employed for not more than twenty-four hours per week, home workers and students employed during the school vacation period." (29 employees).

Number of names of persons on revised voters' list		30
Number of persons who cast ballots	26	
Number of spoiled ballots	1	
Number of ballots marked in favour of applicant	11	
Number of ballots marked against applicant	14	

5915-74-R: Toronto Typographical Union, No. 91 (Applicant) v. Ronalds Federated Graphics (Respondent).

Voting Constituency: "All employees of the respondent at Richmond Hill engaged in composing room work, save and except non-working foremen, persons above the rank of non-working foreman, persons covered by a subsisting collective agreement between the Toronto Printing Pressmen and Assistants' Union No. 10 and the respondent and persons regularly employed for not more than twenty-four hours per week." (80 employees). (FOR PURPOSES OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT PROOF CHECKERS AND PROOF PULLERS ARE NOT INCLUDED IN THE BARGAINING UNIT, AND BY FURTHER AGREEMENT OF THE PARTIES, PUNCH PAPER TAPE MACHINE OPERATORS, AND EMPLOYEES ENGAGED IN PASTE MAKE-UP AND EMPLOYEES ENGAGED IN RUBBER PLATE MOULDING DEPARTMENT ARE INCLUDED IN THE BARGAINING UNIT.).

Number of names of persons on revised voters' list		79
Number of persons who cast ballots	77	
Number of spoiled ballots	1	
Number of ballots marked in favour of applicant	35	
Number of ballots marked against the applicant	41	

Certification Dismissed Subsequent to Post-Hearing Vote

5364-73-R: Warehousemen and Miscellaneous Drivers, Local 419, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. P. Culotta & Company Limited (Respondent) v. Group of Employees (Intervener).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office and sales staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (12 employees in the unit).

Number of names of persons on revised voters list		11
Number of persons who cast ballots	9	
Ballots segregated and not counted	1	
Number of ballots marked in favour of applicant	2	
Number of ballots marked against applicant	6	

5477-74-R: Graphic Arts International Union, Local 542, Hamilton (Applicant) v. John Kerr & Son Limited (Respondent) v. Galt Typographical Union No. 411 (Intervener #1) v. Brantford Printing Pressmen & Assistants' Union, No. 195 (Intervener #2).

Unit: "all bindery workers in the employ of the respondent in the Regional Municipality of Cambridge, save and except non-working foremen, persons above the rank of non-working foreman, and persons covered by subsisting collective agreements." (12 employees in the unit).

Number of names of persons on voters' list		7
Number of persons who cast ballots	7	
Number of ballots marked in favour of applicant	0	
Number of ballots marked against applicant	7	

5823-74-R: Oil & Gas Technicians, Service, Domestic, & General Workers Union Local 1267 (Applicant) v. Don Risk Equipment Ltd. (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at Maple, save and except supervisors, persons above the rank of supervisor, office and sales staff, students employed during the school vacation period and persons regularly employed for not more than 24 hours per week." (14 employees in the unit).

Number of names of persons on voters' list		13
Number of persons who cast ballots	12	
Number of ballots marked in favour of applicant	4	
Number of ballots marked against applicant	8	

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING JULY

(INADVERTENTLY DELETED FROM THE JUNE 1974 MONTHLY REPORT).

5666-74-R: The Civil Service Association of Ontario (Inc.) (Applicant) v. Sunnybrook Medical Center (Respondent). (no employees).

5713-74-R: International Union of Operating Engineers, Local 793 (Applicant) v. United Asbestos Corporation Limited (Respondent) v. United Steelworkers of America (Intervener). (30 employees).

5924-74-R: Labourers' International Union of North America, Local 1059 (Applicant) v. F. A. Tucker (Ontario) Ltd. (Respondent). (9 employees).

5967-74-R: Laborers International Union of North America, Local 493 (Applicant) v. Anthony DeRose Limited (Respondent). (3 employees).

5968-74-R: Service Employees Union, Local 210, affiliated with Service Employees International Union, A.F.L.-C.I.O.-C.L.C. (Applicant) v. Saugeen Memorial Hospital (Respondent). (41 employees).

5990-74-R: United Brotherhood of Carpenters and Joiners of America, Local Union 1190 (Applicant) v. Two Star Carpentry Ltd. (Respondent). (2 employees).

6000-74-R: Teamsters Union, Local 938 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Star Transfer Limited (Respondent). (36 employees).

6012-74-R: Service Employees Union, Local 204, affiliated with the S.E.I.U., A.F. of L., C.I.O., C.L.C. (Applicant) v. The Wellesley Hospital (Respondent) v. International Union of Operating Engineers, Local 796 (Intervener). (55 employees).

6042-74-R: Teamsters Local Union No. 230, Ready Mix, Building Supply, Hydro and Construction Drivers, Warehousemen and Helpers, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Bot Construction (Canada) Limited (Respondent). (23 employees).

6043-74-R: Teamsters Local Union No. 230, Ready Mix, Building Supply, Hydro and Construction Drivers, Warehousemen and Helpers, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Clarkson Construction Company Limited (Respondent). (23 employees).

6069-74-R: International Association of Bridge, Structural and Ornamental Iron Workers, Local Union 721 (Applicant) v. A. V. Tennant Contractors Ltd. (Respondent). (2 employees).

6072-74-R: Teamsters Local Union No. 230, Ready Mix, Building Supply, Hydro and Construction Drivers, Warehousemen and Helpers affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Bot Construction (Canada) Limited (Respondent). (23 employees).

6108-74-R: Canadian Union of Public Employees (Applicant) v. The Shaver Hospital for Chest Diseases (Respondent). (18 employees).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED OF
DURING JULY

5581-74-R: George Bardeggia (Applicant) v. The Newspaper Guild Canadian Region (Respondent) v. The Sudbury Star (a division of Thomson Newspaper Limited) (Intervener). (GRANTED).

Unit: "all employees in the Circulation Department of the Sudbury Star (a division of Thomson Newspaper Ltd.) at Sudbury, save and except circulation manager, students employed during the school vacation period and persons regularly employed for not more than 24 hours per week." (12 employees in the unit).

Number of names of persons on voters' list		10
Number of persons who cast ballots		10
Ballots segregated and not counted	1	
Number of ballots marked in favour of respondent	3	
Number of ballots marked against applicant	6	

5582-74-R: Kathleen Martin (Applicant) v. The Newspaper Guild Canadian Region (Respondent) v. The Sudbury Star (a division of Thomson Newspaper Limited) (Intervener). (DISMISSED).

Unit: "all employees in the News Department of The Sudbury Star (a division of Thomson Newspaper Limited) at Sudbury, save and except

managing editor, editorial page and news editor, city editor, women's editor, photographic supervisor, students employed during the school vacation period and persons regularly employed for not more than 24 hours per week." (34 employees in the unit).

Number of names of persons on voters' list		27
Number of persons who cast ballots	26	
Ballots segregated and not counted	3	
Number of spoiled ballots	1	
Number of ballots marked in favour of respondent	13	
Number of ballots marked against respondent	9	

5583-74-R: Shirley Armstrong (Applicant) v. The Newspaper Guild Canadian Region (Respondent) v. The Sudbury Star (a division of Thomson Newspaper Limited) (Intervener). (DISMISSED).

Unit: "all employees in the Accounting Department of The Sudbury Star (a division of Thomson Newspapers Limited) at Sudbury, save and except chief accountant, assistant chief accountant, publisher's confidential secretaries, payroll clerk, students employed during the school vacation period and persons regularly employed for not more than 24 hours per week." (6 employees in the unit).

Number of names of persons on voters' list		6
Number of person who cast ballots	6	
Number of ballots marked in favour of respondent	3	
Number of ballots marked against respondent	3	

5707-74-R: Fred Upshaw (Applicant) v. International Chemical Workers Union, Local 688 (Respondent). (160 employees). (DISMISSED).

(1974) 2 OLRB M.R. - PAGE 502.

5753-74-R: Robert Killen (Applicant) v. International Union of United Auto Workers, Aerospace and Agricultural Implement Workers of America, Local 525 (Respondent). (GRANTED).

Unit: "all employees of Lely Ltd. at Burlington, save and except foremen, persons above the rank of foreman, office and sales staff, professional engineers, students employed during the school vacation period and students employed on a co-operative training program with a university." (25 employees in the unit).

Number of names of persons on voters' list	31
Number of persons who cast ballots	24
Number of ballots marked in favour of respondent	6
Number of ballots marked against respondent	18

APPLICATIONS FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING

JULY

5216-73-R: Local Union No. 1000 Brewery, Soft Drink, Distillery, Distributors and Miscellaneous Workers, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicants) v. Dominion Stores Limited (Respondent) v. General Workers Local 800, of the International Union of United Brewery Flour, Cereal, Soft Drink and Distillery Workers of America and the International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America (Predecessor Trade Union). (DISMISSED).

5494-74-R: The Canadian Union of Public Employees (Applicant) v. The Corporation of the City of Nanticoke (Respondent) v. The Corporation of the Town of Port Dover (Intervener #1) v. The Corporation of the Township of Woodhouse (Intervener #2) v. The Corporation of the Township of Walpole (Intervener #3). (GRANTED).

Unit: "all employees of the respondent, save and except foremen, persons above the rank of foreman, office staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period."

Number of names of persons on revised voters list	35
Number of persons who cast ballots	34
Number of ballots marked in favour of applicant	18
Number of ballots marked against applicant	16

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING

JULY

5512-74-U: Admiral Engineering and Construction Limited (Applicant) v. Local Union 47, Sheet Metal Workers International Association (Respondent). (TERMINATED).

5939-74-U: Wheelabrator Corporation of Canada Limited (Applicant) v. Frank Holburn (Respondent). (DIRECTION).

(1974) 2 OLRB M.R. - PAGE 490.

5942-74-U: The Wood, Wire & Metal Lathers' International Union, Local 562, Tom Bond and Amile Nikita (Applicants) v. United Brotherhood of Carpenters and Joiners of America, Local 1256, Donald Loucks and Jack Piggott (Respondents). (DIRECTION).

5996-74-U: Canadian Tyler Refrigeration Ltd. (Applicant) v. Robert Bobbette et al (Respondents). (GRANTED).

6022-74-U: Quebec Hardwoods Incorporated, (Formerly Canadian Hardwoods Limited) (Applicant) v. United Brotherhood of Carpenters and Joiners of America, Local Union 2759 (Respondent). (GRANTED).

(1974) 2 OLRB M.R. - PAGE 506.

6023-74-U: Quebec Hardwoods Incorporated, (Formerly Canadian Hardwoods Limited) (Applicant) v. Claude Asselin, et al (Certain employees of the Respondents). (DISMISSED).

6120-74-U: Seaway Midwest Ltd. (Applicant) v. Those persons named in Schedule "A" and "B" to this Application (Respondents). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING JULY

5870-74-U: Warehousemen and Miscellaneous Drivers Union, Local 419 (Applicant) v. Leamington Vegetable Growers' Co-operative Limited, operating as G. Smith Produce Company (Respondent). (GRANTED).

5871-74-U: Warehousemen and Miscellaneous Drivers Union, Local 419 (Applicant) v. Bruce Smith (Respondent). (GRANTED).

5976-74-U: Printing Specialties & Paper Products Union, Local 466 (Applicant) v. The Telfer Paper Box Company Limited and Howard Sidsworth (Respondents). (WITHDRAWN).

5988-74-U: Labourers' International Union of North America, Local 183 (Applicant) v. Natale Brothers Paving Company Limited, Sean P. McKenna, Sam Molinaro and Rocco Morsillo (Respondents). (WITHDRAWN).

6015-74-U: Canadian Tyler Refrigeration Ltd. (Applicant) v. Maxwell Giles et al and Victor Eades (Respondents). (WITHDRAWN).

COMPLAINTS UNDER SECTION 79 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING
JULY

4329-73-U: Zvonko Gojmerac (Complainant) v. Canadian Steelworkers Union (Atlas Division) (Respondent). (DISMISSED).

4983-73-U: Le Syndicat des Employes du Manoir Laurier Lte (C.S.N.) (The Union of Laurier Manor Ltd. Employees (C.N.T.U.) (Complainant) v. Manoir Laurier Lte (Laurier Manor Ltd) (Respondent). (WITHDRAWN).

5072-73-U: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) (Complainant) v. Fruehauf Trailer Company of Canada Limited (Respondent). (GRANTED).

(1974) 2 OLRB M.R. - PAGE 474.

5161-73-U: Warehousemen and Miscellaneous Drivers Local Union 419 (Complainant) v. Lyman Tube Division, Jannock Industries Limited (Respondent). (GRANTED).

(1974) 2 OLRB M.R. - PAGE 456.

5410-73-U: International Union of Operating Engineers Local 796 (Complainant) v. St. Vincent Hospital (Respondent). (DISMISSED).

5429-73-U: Oscar DeGarie (Complainant) v. United Steelworkers of America, Local 6500 (Respondent). (DISMISSED).

5482-74-U: International Molders & Allied Workers Union (Complainant) v. Delhi Metal Products Limited (Respondent). (GRANTED).

(1974) 2 OLRB M.R. - PAGE 450.

5502-74-U: Raymond Glenn Smith (Sr.) (Complainant) v. International Union, United Automobile Aerospace & Agricultural Implement Workers of America (UAW) and its Local 252 (Respondent). (DISMISSED).

5608-74-U: Local Union 387 - International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America - CLC (Complainant) v. Canada Dry Limited (Respondent). (WITHDRAWN).

5609-74-U: Local Union 387 - International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America - CLC (Complainant) v. Canada Dry Limited (Respondent). (WITHDRAWN).

5776-74-U: Mr. Micheal A. Jones (Complainant) v. International Association of Heat and Frost Insulators and Asbestos Workers, Local 95 (Respondent). (WITHDRAWN).

5790-74-U: Rita Di Santo (Complainant) v. Canadian Textile and Chemical Union (Respondent). (WITHDRAWN).

5800-74-U: Local 67, Optical and Plastic Technicians & Allied Workers Union of United Hat, Cap & Millinery Workers' International Union (Complainant) v. George H. Nelms Limited (Respondent). (DISMISSED).

5808-74-U: James Meikle (Complainant) v. RWDSU Loc 414 (Respondent). (WITHDRAWN).

5813-74-U: United Steelworkers of America (Complainant) v. Brampton Aluminum Products (Respondent). (WITHDRAWN).

5847-74-U: Oil & Gas Technicians, Service, Domestic and General Workers' Union, Local 1267 (Complainant) v. Don Risk Equipment Limited (Respondent). (DISMISSED).

5869-74-U: Warehousemen and Miscellaneous Drivers Union, Local 419 (Complainant) v. Leamington Vegetable Growers' Co-operative Limited, operating as G. Smith Produce Company (Respondent). (GRANTED).

5923-74-U: Walter Hambleton (Complainant) v. Canadian Transport Workers Union #186 N.C.C.L. (Respondent). (WITHDRAWN).

5929-74-U: John Michael Metzler (Complainant) v. Union of Drivers and Dock Workers of Wilson's Truck Lines Limited (Respondent). (WITHDRAWN).

5952-74-U: Oil & Gas Technicians, Service, Domestic and General Workers Union, Local 1267 (Complainant) v. Consumers Distributing Co. Ltd. (Respondent). (WITHDRAWN).

5953-74-U: The Civil Service Association of Ontario, (Inc.) (Complainant) v. Fleetview Services Limited (Respondent). (WITHDRAWN).

5989-74-U: Labourers' International Union of North America, Local 183 (Complainant) v. Natale Brothers Paving Company Limited, Sean P. McKenna, Sam Molinaro and Rocco Morsillo (Respondents). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

5885-74-M: Local 403 of The Canadian Food and Allied Workers (Trade Union) v. St. William Frozen Fruits (Employer). (GRANTED).

5921-74-M: Service Employees Union, Local 204 (Trade Union) v. The Greater Niagara Hospital (Employer). (GRANTED).

5922-74-M: Service Employees' Union, Local 204 (Trade Union) v. The St. Catharines General Hospital (Employer). (GRANTED).

5926-74-M: Service Employees Union, Local 204 (Trade Union) v. The Brantford General Hospital (Employer). (GRANTED).

5927-74-M: Service Employees Union, Local 204 (Trade Union) v. St. Joseph's Hospital (Employer). (GRANTED).

5930-74-M: London and District Building Services Workers' Union, Local 220 (Trade Union) v. Tillsonburg District Memorial Hospital (Employer). (GRANTED).

5937-74-M: Simpson Plant Council (Trade Union) v. A. G. Simpson Company Limited (Employer). (GRANTED).

5940-74-M: United Rubber Workers of America, Local 687 (Trade Union) v. United Tire & Rubber Co. Ltd. (Employer). (GRANTED).

5941-74-M: Gidon Industries Inc. (Employer) v. United Steelworkers of America (Trade Union). (GRANTED).

5948-74-M: United Rubber Workers of America, Local 526 (Trade Union) v. The Biltrite Rubber (1969) Limited (Employer). (GRANTED).

5951-74-M: Textile Workers' Union of America, Local 1430 (Trade Union) v. Harding Carpents Limited (Employer). (GRANTED).

5959-74-M: Service Employees International Union, Local 532 (Trade Union) v. West Haldimand General Hospital (Employer). (GRANTED).

5960-74-M: London & District Building Service Workers Union, Local 220 (Trade Union) v. Alexandra Hospital (Employer). (GRANTED).

5861-74-M: The Canadian Union of Public Employees Local 1097 (Trade Union) v. Hotel Dieu Hospital St. Catharines (Employer). (GRANTED).

5963-74-M: Service Employees Union Local 204 (Trade Union) v. South Waterloo Memorial Hospital (Employer). (GRANTED).

5986-74-M: The Belleville General Hospital (Employer) v. Service Employees Union, Local 183 (Trade Union). (GRANTED).

6005-74-M: Service Employees Union, Local 204 (Trade Union) v. Willett Hospital Corporation (Employer). (GRANTED).

6016-74-M: Public General Hospital Society of Chatham (Employer) v. Service Employees Union, Local 210 (Trade Union). (GRANTED).

6024-74-M: The Labourers' International Union of North America, Local 506 (Trade Union) v. Beer Precast Concrete Limited (Employer). (GRANTED).

6025-74-M: Hoffman Brothers Limited (Employer) v. Teamsters Local Union 879 (Trade Union). (GRANTED).

6057-74-M: Service Employees Union, Local 478 (Trade Union) v. St. Joseph's Hospital, Elliot Lake (Employer). (GRANTED).

6064-74-M: Service Employees Union, Local 268 (Applicant) v. The General Hospital, Sault Ste. Marie (Respondent). (GRANTED).

6079-74-M: International Union of Operating Engineers, Local 772 (Applicant) v. St. Joseph's Hospital (Respondent). (GRANTED).

6080-74-M: International Union of Operating Engineers, Local 772 (Applicant) v. The Brantford General Hospital (Respondents). (GRANTED).

APPLICATIONS UNDER SECTION 55 DISPOSED OF DURING JULY

5142-73-R: Local Union 1687 of the International Brotherhood of Electrical Workers (Applicant) v. H. Allaire and Sons Company Limited (Respondent) v. Allaire Electrical and Mechanical Contractors (North Bay) Limited (Intervener) v. Group of Employees (Objectors). (DISMISSED).

(1974) 2 OLRB M.R. - PAGE 457.

5493-74-R: The Canadian Union of Public Employees (Applicant) v. The Corporation of the Township of Norfolk (Respondent). (GRANTED).

Unit: "all employees of the respondent, save and except foremen, persons above the rank of foreman, office staff and students employed during the school vacation period."

Number of names of persons on voters' list		17
Number of persons who cast ballots	17	
Number of ballots marked in favour of applicant	9	
Number of ballots marked against applicant	8	

5495-74-R: The Canadian Union of Public Employees (Applicant) v. The Corporation of the Township of Delhi (Respondent) v. Group of Employees (Objectors). (GRANTED).

Unit: "all employees of the respondent, save and except foremen, persons above the rank of foreman, office staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period."

Number of names of persons on revised voters' list		16
Number of persons who cast ballots	15	
Number of ballots marked in favour of applicant	9	
Number of ballots marked against the applicant	6	

JURISDICTIONAL DISPUTE

5814-74-JD: The Sheet Metal Workers' International Association, Local 562 (Complainant) v. Canadian Johns-Manville Co. Ltd. and The Ontario Provincial Council, United Brotherhood of Carpenters and Joiners of America (Respondents). (WITHDRAWN).

APPLICATION FOR DETERMINATION UNDER SECTION 95(2) DISPOSED OF DURING

JULY

5694-74-M: The Corporation of the Town of Fort Erie (Employer) v. Canadian Union of Public Employees Local 714 (Trade Union). (AFFIRMATIVE).

REFERENCES TO BOARD PURSUANT TO SECTION 96

5834-74-M: The Timmins Ambulance Service (Employer) v. Canadian Union of Public Employees, Local 1424, Timmins (Trade Union) v. Canadian Union of Public Employees, Local 1484 (Party Added by the Board) v. Porcupine Area Ambulance Service (Party Added by the Board). (TERMINATED).

5835-74-M: G. Tamblyn Limited (Employer) v. Retail Clerks Union Local 206 and 486 (Trade Union). (TERMINATED).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

1322-71-R: The General Contractors' Section of the Toronto Construction Association (Applicant) v. The Carpenters District Council of Toronto and Vicinity on Behalf of Locals 27, 666, 681, 1133, 1747, 1963, 3227, 3233 of the United Brotherhood of Carpenters and Joiners of America (Respondent) v. Heavy Construction Association of Toronto (Intervener). [Re: W.H. Dodd Construction Company Limited] (REQUEST DENIED).

5439-74-R: International Molders and Allied Workers Union (Applicant) v. LOC - Pipe Division of Lake Ontario Concrete Industries, a division of Kilmer Van Nostrand Co. Limited (Respondent) v. Labourers' International Union of North America, Local 597 (Intervener). (REQUEST DENIED).

5938-74-R: Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local 647 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Dempsters Bread Division of Corporate Foods Limited (Respondent). (REQUEST DENIED).

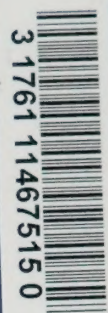
APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 79

4989-73-U: Kenneth Hughes (Complainant) v. Canadian Union of Public Employees and its Local 922 and The Board of Education for the Borough of North York (Respondents). (REQUEST DENIED).

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